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WORKING DOCUMENT

From: General Secretariat of the Council
To: Delegations

Subject: 102nd session of the Maritime Safety Committee
(remote meeting, 4-11 November 2020)
– Non-paper from the Commission drafted to facilitate EU co-ordination

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (23.11.2020)

Delegations will find attached a non-paper from the Commission drafted to facilitate co-ordination between the EU Member States and the Commission in respect of the subject mentioned above, **revised in the light of the discussions at the Shipping Working Party meetings on 21 and 28 October and 4 November 2020 and subsequent lifting of scrutiny reservations.**^{1 2}

NB: agenda items marked with asterisks (**) are to be postponed to MSC 103. The related draft EU positions are put within square brackets.

¹ ~~General scrutiny reservation: BE, EL, IT, MT.~~

² Doc. 11781/20 ADD 1 has been integrated into this document. Additional documents from ADD 1 are marked with an asterisk (*).

NON-PAPER

**102ND SESSION OF THE
IMO MARITIME SAFETY COMMITTEE
(REMOTE MEETING, 4-11 NOVEMBER 2020)**

The annotated agenda is presented to the Council with the view to establishing the EU positions on agenda items for the 102nd session of the IMO Maritime Safety Committee (MSC).³

This document lists all received documents under the agenda items of EU relevance⁴.

The comments by the Commission are printed in *italics*. The proposed position of the Union is printed in ***bold italics***.

Should Member states wish to express a position on matters not covered by the Union position, in accordance with the principle of loyal cooperation they shall refrain from any measure that may jeopardise the attainment of the Union's objectives.

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³ Member States urge the Commission to use agreed and long-established wording for the EU coordination documents, including the initial paragraphs of IMO coordination non-papers, namely: "Non-restrictive list of items for which EU, common or coordinated positions could be established. This document lists all received documents. The Commission suggests focussing the discussion on the proposed positions and on the consideration of support to submissions by another EU or EEA State as fellow EU/EEA Member State. This does not exclude the discussion of any other item on the agenda, if explicitly requested by an EU/EEA Member State or the Commission."

⁴ Based on documents received up to 27 October 2020.

⁵ Reservation: all delegations (pending the outcome of discussions on IMO – EU Co-ordination procedural matters within the framework of the SWP in Brussels).

⁶ At BLG 17, the Commission and the Council Secretariat informed the EU Member States' delegations about emerging changes resulting from the adaptation to the requirements of the Lisbon Treaty to the EU IMO coordination process and the scope of EU competence over issues addressed in IMO. Many delegations expressed serious concerns about these changes, including their immediate effect on the current and upcoming EU-IMO coordination exercise(s), and requested the Commission to clarify and elaborate these changes in writing for further consideration. Consequently, the following delegations entered a reservation or a scrutiny reservation against EU competency claims in this document and the procedural changes until their further clarification:

Scrutiny reservation: ES, FI, FR, IT, PL.

Reservation: BE, CY, DE, DK, EL, MT, NL, SE.

⁷ The Commission considers the matter of EU coordination sufficiently clear, based on existing Treaty provisions and extensive discussions and written exchanges within the Shipping Working Party which took place during the first half of 2013. It therefore does not see the need of the above footnotes and requests the matter to be resolved by the Council.

Agenda item 1 – Adoption of the agenda

Docs: MSC 102/1/Rev.1, MSC 102/1/1/Rev.1

MSC 102/1/Rev.1 (Secretariat): provides the revised provisional agenda for MSC 102.

MSC 102/1/1/Rev.1 (Secretariat): provides information on action the Committee will be invited to take in relation to items on the agenda of its postponed 102nd session.

In accordance with MSC 102/1/1/Rev.1, only a Drafting Group on Amendments to Mandatory Instruments is to be established at this session.

Agenda item 2 – Decisions of other IMO bodies

Docs: MSC 102/2, MSC 102/2/1-5

MSC 101/2 (Secretariat): provides information on the outcome of TC 69 on matters of interest to the Committee.

MSC 102/2/1 (Secretariat): provides information on the outcome of C 122, C/ES.30 and C 123 on matters of interest to the Committee.

MSC 102/2/2 (Secretariat): provides information on the outcome of A 31 on matters of interest to the Committee.

MSC 102/2/3 (Russian Federation, the United Arab Emirates and IACS): discusses the process of updating the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC) and proposes amendments to MSC.1/Circ.1587 and MSC.1/Circ.1500/Rev.1.

MSC 102/2/4 (Russian Federation, the United Arab Emirates and IACS): discusses the process of updating the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC) and proposes a joint MSC-MEPC circular.

*MSC 102/2/5 (Secretariat): provides information on the outcome of C/ES.31, C/ES.32 and ALCOM on matters of interest to the Committee.

From ADD 1: It should be noted that C/ES.32 and ALCOM had invited submitters of documents regarding the challenges arising from the COVID-19 pandemic to shipping – including measures to prevent the spread of infectious diseases on ships, ensuring the continuous operation of international maritime traffic, crew change challenges, the matter of force majeure under international conventions, ways to meet the requirements of international conventions in a non-face-to-face manner and improvement of the current survey and audit systems – to MSC for further consideration and action as deemed appropriate. The submissions to this session are considered below under the relevant agenda items.

In addition, an extraordinary session of MSC adopted a resolution MSC.473(ES.2) on Recommended action to facilitate ship crew change, access to medical care and seafarer travel during the COVID-19 pandemic.

Resolution A.658(16) on Use and fitting of retro-reflective materials on life-saving appliances, and 2019 Survey Guidelines under the Harmonized System of Survey and Certification (HSSC)

EU relevance

The Union has competence on the matter.

On 28 November 2019, the Council adopted the Decision (EU) 2019/2008 on the position to be taken on behalf of the European Union at the International Maritime Organization during the 31st session of its Assembly (A 31) on the adoption of amendments to resolution A.658(16) on Use and fitting of retro-reflective materials on life-saving appliances as well as the adoption of a resolution on Survey Guidelines under the Harmonized System of Survey and Certification (HSSC). The EU legal instruments referring to these IMO resolutions are the following:

- a. The survey guidelines under the harmonised system of survey and certification (HSSC) are a requirement under Regulation (EC) No 391/2009.*
- b. Section MED/1.30 of Commission Implementing Regulation (EU) 2019/1397 of 6 August 2019 on design, construction and performance requirements and testing standards for marine equipment and repealing Implementing Regulation (EU) 2018/773 refers to IMO resolution A.658(16). Therefore, the issue on retro-reflective materials on life-saving appliances falls within the scope of Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (Marine Equipment Directive).*

In view of the above, both issues fall under EU exclusive competence.

Background

- a. 2019 Survey Guidelines under the Harmonized System of Survey and Certification (HSSC)*

A 31 noted that a number of delegations supported the proposals in document A 31/10/2 (Liberia et al), in particular to consider the need to amend MSC.1/Circ.1500/Rev.1 and MSC.1/Circ.1587 so that draft amendments to the HSSC Guidelines should be linked to mandatory requirements. A 31 therefore invited MSC 102 and MEPC 75 to consider document A 31/10/2 and take action as appropriate.

At the time of A31, the Commission noted that one of the examples provided in A 31/10/2 – the taking of rudder bearing clearance measurements during in-water surveys of rudders – was the subject of an ongoing dispute at III 4, SSE 5, III 5 and MSC 101, where the EU position opposed the more relaxed approach of IACS to such surveys. However, in paragraph 5 of this document, the co-sponsors raised no technical objections to the associated HSSC provisions in the cases cited. The Commission considered that the HSSC Guidelines are not purely a transposition of mandatory measures but a practical guide to their implementation. The Commission considered the main message of document A 31/10/2 in that light. The Commission also took note that the co-sponsors mentioned difficulties encountered by Recognised Organisations "when some Member States, either individually or collectively, have taken action to make the HSSC Survey Guidelines mandatory". The Commission notes that Regulation (EC) No 391/2009, Criterion B7k makes HSSC Guidelines mandatory for EU ROs. The EU position (w. doc. 14250/4/19) at A 31 was:

“Support, in general, the aim of A 31/10/2, which concerns the process of updating the HSSC Guidelines, provided that a high level of safety is promoted.”

b. Resolution A.658(16) on Use and fitting of retro-reflective materials on life-saving appliances

At MSC 100, the EU submission (MSC 100/19/4) asked for minor amendments to IMO resolution A.658(16) on Use and fitting of retro-reflective materials on life-saving appliances. It made the point that the resolution required the use of carbon arc testers for the accelerated weathering tests for retro-reflective materials, but this did not reflect modern technologies and it proposed two alternative minor editorials. The Committee agreed to the deletion of the words 'carbon arc' in paragraph 4.10 of that resolution and requested the Secretariat to prepare a relevant draft Assembly resolution, which was then approved by MSC 101 and submitted to A 31 for adoption.

At A 31, the United States and IACS (A 31/10/4) submitted an alternative proposal for the amendments to paragraph 4.10 of Resolution A.658(16). The EU position adopted as part of Council Decision (EU) 2019/2008 was:

“to agree to the adoption of amendments to resolution A.658(16) on Use and fitting of retro-reflective materials on life-saving appliances, as laid down in Annex 27 to IMO document MSC 101/24/Add.1, or alternatively of the amendments proposed in IMO document A 31/10/4.”

A 31 did not finalise the issue but asked interested parties to submit proposals directly to MSC 102.

Consideration at MSC 102

MSC 102/2/2 (Secretariat) informs the Committee of decisions taken at A 31 concerning, inter alia,

- 1. Resolution A.658(16) on Use and fitting of retro-reflective materials on life-saving appliances; and*
- 2. The proposal in A 31/10/2 to ensure a link between the 2019 Survey Guidelines under the Harmonized System of Survey and Certification (HSSC) and mandatory instruments.*

As regards the 2019 HSSC, MSC 102/2/3-4 (Russian Federation, the United Arab Emirates and IACS) have followed up on the decision at A 31 by providing draft amendments to MSC.1/Circ.1587 and MSC.1/Circ.1500/Rev.1 as well as a draft joint MSC-MEPC circular. In both cases, it is stressed that amendments to the HSSC Survey Guidelines introducing new survey items should be approved only when these items can be directly linked to requirements in mandatory instruments that are, or by the time of adoption of the updated HSSC Survey Guidelines will be, in force. However, the Commission considers that it would be beneficial for maritime safety, if guidance were also provided for items, which are not specifically mentioned in the mandatory instruments but are intrinsically linked to them. The inclusion of such items should still be allowed and should be determined on a case-by-case basis by the relevant committees when their omission might lead to a lower safety level.

In view of the A 31 decision on resolution A.658(16), the United Kingdom, United States and IACS submitted document MSC 102/19/1 proposing amendments to paragraph 4.10 of resolution A.658(16) to allow equivalent methods of accelerated weathering and make reference to relevant industry standards in regard to the test methodology as well as suggesting that the existing Assembly resolution is replaced by an MSC resolution to facilitate future updates.

DELETED

Agenda item 3 – Consideration and adoption of amendments to mandatory instruments

Docs: MSC 102/3, MSC 102/3/1-3

MSC 102/3 (Secretariat): the Committee is invited to consider, with a view to adoption, draft amendments to the 1974 SOLAS Convention and the IGF and IGC Codes.

MSC 102/3/1 (Secretariat): the Committee is invited to consider, with a view to adoption, proposed amendments to the International Maritime Dangerous Goods (IMDG) Code, as adopted by resolution MSC.122(75).

MSC 102/3/2 (Secretariat): editorial corrections are proposed to the Spanish version of amendment 40-20 to the IMDG Code, in accordance with the undertaking given by the Spanish delegation at E&T 32 (paragraph 3.35 of document E&T 32/WP.1), for the sake of harmonisation with the Model Regulations solely from an editorial point of view. The present document contains draft amendments to the Spanish version concerning the names and descriptions in the IMDG Code with a view to reflecting the decisions taken by the United Nations Sub-Committee of Experts on the Transportation of Dangerous Goods at its fifty-third, fifty-fourth and fifty-fifth sessions for the Spanish version only. In addition, the other amendments necessary for harmonising names and descriptions with the Model Regulations are included.

MSC 102/3/3 (Secretariat): informs the Committee of corrections to the amendments to the International Code of Safety for High-Speed Craft, 1994 (1994 HSC Code), adopted by resolutions MSC.259(84) and MSC.438(99).

EU relevance

The Union has competence on the matter.

COM (2020)58 final on a Proposal for a Council Decision covers, inter alia, amendments to Chapter II-1 of the International Convention for the Safety of Life at Sea and amendments to the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels (IGF Code). Article 6(2)(a)(i) of Directive 2009/45/EC on safety rules and standards for passenger ships applies SOLAS, as well as the IGF Code to Class A passenger ships. Therefore, the amendments due to be adopted at MSC 102, have a direct effect on requirements applied through Directive 2009/45/EC.

Background

a. Amendments to SOLAS Chapter II-1/A-1/3-8 on towing and mooring equipment

The EU raised the issue of safe mooring (document MSC 95/19/2) as a new unplanned output at MSC 95. A Japanese proposal (document MSC 95/19/13) to add consideration of maintenance and replacement of damaged or deteriorated mooring lines was also accepted by MSC. The issue was then considered by the Sub-Committee on Ship Design and Construction (SDC). SDC 6 finalised the draft amendments to SOLAS and the related guidelines and guidance, which were all approved by MSC 101 and referred to MSC 102 for adoption.

- b. *Watertight integrity – consistency between regulations in SOLAS Chapter II-1 B, B-1 and B-2 to B-4*

MSC 96 had agreed to an output on "Review SOLAS chapter II-1, parts B-2 to B-4, to ensure consistency with parts B and B-1 with regard to watertight integrity", assigning the SDC Sub Committee as the coordinating organ. SDC 6 finalised the draft amendments to SOLAS and referred them to MSC 101, which approved them and referred them to MSC 102 for adoption.

- c. *Amendments to parts A-1 and B-1 of the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels (IGF Code)*

The 5th session of the Sub-Committee on Carriage of Cargoes and Containers (CCC 5) agreed to draft amendments to paragraph 6.7.1.1 (pressure relief systems) and chapter 11 (fuel preparation room fire extinguishing systems) of part A-1 of the IGF Code. MSC 101 then approved these draft amendments and referred them to MSC 102 with a view to adoption.

DELETED

Consideration at MSC 102

The position of the Union is established by Council Decision (EU) 2020/721, as amended. In accordance with this Council Decision, the Member States shall support the adoption of the above-mentioned amendments to the International Convention of Safety of Life at Sea (SOLAS) and to the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels (IGF Code).

DELETED

Agenda item 5 – Regulatory scoping exercise for the use of Maritime Autonomous Surface Ships (MASS)**

Docs: MSC 102/5, MSC 102/5/1-32, MSC 102/INF.8, MSC 102/INF.17

MSC 101/5 (Secretariat): reports on the progress of the regulatory scoping exercise for the use of Maritime Autonomous Surface Ships (MASS).

MSC 102/5/1 (Secretariat): contains in the annex the report of the meeting of the Intersessional Working Group on Maritime Autonomous Surface Ships, held at IMO Headquarters from 2 to 5 September 2019.

MSC 102/5/2 (IFSMA): provides comments on document MSC 102/5/1 regarding the role of the shipmaster, which was identified as a common potential gap during the regulatory scoping exercise of the Maritime Safety Committee on Maritime Autonomous Surface Ships (MASS), and contains recommendations for the Organization's future work on MASS.

MSC 102/5/3 (Marshall Islands): provides a summary of the results of the second step of the regulatory scoping exercise (RSE) for the International Regulations for Prevention of Collisions at Sea 1972 (COLREG) as carried out by the group of volunteer Member States.

MSC 102/5/4 (Belgium, China and the Netherlands): contains a summary of results of the second step of the regulatory scoping exercise (RSE) concerning the review of SOLAS chapter III and the LSA Code.

MSC 102/5/5 (India): presents the results of the regulatory scoping exercise undertaken for the provisions of the International Convention on Load Lines 1966, as amended, its associated Protocol of 1988, Part A of the Intact Stability Code, and the IMO Instruments Implementation Code.

MSC 102/5/6 (France): provides the summary of the results of the second step of the RSE for SOLAS Chapter II-1.

MSC 102/5/7 (Germany): contains a list of common potential gaps and/or themes identified during the first step of the Regulatory scoping exercise.

MSC 102/5/8 (Liberia): provides the summary of results of the second step of the Regulatory scoping exercise (RSE) for MASS covering the International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969).

MSC 102/5/9 (China): provides a summary of the second step of the RSE results for chapter V of the SOLAS Convention, and proposes to develop a harmonised solution to address MASS operation in SOLAS Convention as a whole.

MSC 102/5/10 (Finland): provides the summary of results of the second step of the assessment of SOLAS chapter XI-1 and related codes.

MSC 102/5/11 (Finland): provides the summary of results of the second step of the assessment of SOLAS chapter XI-2 and the ISPS Code.

MSC 102/5/12 (Finland): provides the summary of results of the second step of the assessment of SOLAS chapter XIV and the Polar Code.

MSC 102/5/13 (France and Spain): provides a report on the second step of the regulatory scoping exercise (RSE) on Maritime Autonomous Surface Ships (MASS) for the International Convention on Maritime Search and Rescue 1979 (SAR Convention) carried out by a group of volunteer Member States and includes an identification of the most appropriate ways to address MASS and findings.

MSC 102/5/14 (Russian Federation): provides information about the work carried out by the Russian Federation regarding the development of national legislation for the conducting of trials and subsequent operation of MASS. The generalised approach is proposed for the national and international legislation to treat the ship as a subject of law, depersonalising the ship from its crew, which would substantially facilitate the development and amending the existing legislation for the purpose of MASS. The document also proposes the approach to interpret the existing provisions of COLREG 1972 in order to deal with the automatic passage of MASS. It is proposed to consider the approaches with a view to use them in further IMO work related to MASS.

MSC 102/5/15 (Turkey): provides the summary of the results of the second step of RSE for SOLAS chapter IV.

MSC 102/5/16 (CMI): includes a summary of the analysis by the Comité Maritime International Working Group on Maritime Autonomous Surface Ships (CMI IWG MASS) on instruments under the purview of the Maritime Safety Committee which identifies horizontal legal issues.

MSC 102/5/17 (United States): provides a report on the second step of the regulatory scoping exercise (RSE) on the use of Maritime Autonomous Surface Ships (MASS) for the STCW Convention and Code, including identification of the most appropriate ways to address MASS and findings.

MSC 102/5/18 (ISO): contains a report on the work undertaken by ISO TC8 to develop an internationally agreed terminology for MASS. The document also contains the currently proposed terminology.

MSC 102/5/19 (Japan): provides the summary of the results of the second step of the RSE for chapter II-2 of the annex to the SOLAS Convention and the codes mandated by the chapter.

MSC 102/5/20 (Japan): provides a summary of the results of the second step of the RSE for chapter VI of the annex to the SOLAS Convention and the codes mandated by the chapter.

MSC 102/5/21 (Japan): provides the summary of the results of the second step of the RSE for chapter VII of the annex to the SOLAS Convention and the codes mandated by the chapter.

MSC 102/5/22 (Japan): provides a summary of the results of the second step of the RSE for chapter XII of the annex to the SOLAS Convention and the standards mandated by the chapter.

MSC 102/5/23 (Japan): provides the summary of the results of the second step of the RSE for SOLAS chapter XIII.

MSC 102/5/24 (Japan): provides the summary of the results of the second step of the RSE for CSC 1972.

MCS 102/5/25 (Norway): reports on Norway's analysis of SOLAS chapter IX and the ISM Code in relation to the second step of the regulatory scoping exercise for the use of MASS.

MSC 102/5/26 (Japan): provides a report on the second step of the Regulatory scoping exercise (RSE) for the STCW-F Convention and Code.

MSC 102/5/27 (Japan): provides Japan's views on elements to be considered regarding the priority of further work and proposals on the way forward after the RSE.

MSC 102/5/28 (IMSO): provides comments on additional common potential gaps and themes described in paragraph 4.10 of document.

MSC 102/5/29 (Russian Federation): provides information on MASS trials carried out by the Russian Federation within the comprehensive Autonomous and Remote Navigation Trial Project being implemented in accordance with "MARINET" road map of the National Technology Initiative. Ongoing trials involve four commercial vessels (tanker, bulk carrier, dredger and barge) and suppose testing of the same set of solutions in the real conditions in three different areas (Barents, Black and Caspian Seas). In conjunction with the development of national legislation for the conducting of trials and subsequent operation of MASS the project shall allow to create universal approach and technology architecture for upgrading any type of commercial vessels to MASS. The project was started in 2019, onboard trials planned to start in April 2020, final results are expected by the end of 2020.

MSC 102/5/30 (Republic of Korea): provides comments on documents MSC 102/5/1, MSC 102/5/2 and MSC 102/5/7 regarding the issues which were identified as common potential gaps and themes during the regulatory scoping exercise (RSE) of the Maritime Safety Committee (MSC) on Maritime Autonomous Surface Ships (MASS).

MSC 102/5/31 (Republic of Korea): provides comments on the ISO standardisation work for terminology for MASS (not issued)

MSC 102/5/32 (China): provides comments on document MSC 102/5/1 regarding the identification of priorities for further work. Based on the summary results of the first and second step of the regulatory scoping exercise (RSE) provided by the volunteering Member States, five "policy issues" are proposed to be considered as priorities to be included in the outcome of the RSE.

MSC 102/INF.8 (Japan): provides the report on MASS trials conducted by NYK Group, in accordance with the Interim Guidelines for MASS Trials.

MSC 102/INF.17 (Finland): provides further information on themes identified in the regulatory scoping exercise (RSE), especially new gaps in communications infrastructure and connectivity. The adoption of remote and autonomous technologies requires increasing availability of accurate, up-to-date necessary data, ensuring efficient and reliable communications infrastructure as well as adoption of decentralised data-sharing infrastructure globally. Accordingly, automation may require development of new legal obligations to sharing and managing data. The adoption of remote and autonomous technologies, including artificial intelligence (AI), will have a huge impact on shipping. It will require new holistic thinking towards future-proof legislation for example accountability, traceability and liability issues as well as concerning use of data. Therefore, this document provides examples of issues that are under competence of several committees but need to be considered in the same context.

EU relevance

At this stage of the scoping exercise, the impact on EU legislation cannot be determined (other than that there will be an impact once a decision is reached on what changes to which Conventions need to be made). It is also not clear how MASS will be defined and if, and for what trade/routes, unmanned fully autonomous service, if at all, will be accepted or put into practice. Research on the use of Maritime Autonomous Surface Ships (MASS) is advancing. The European industry is at the forefront of these technological developments and should be supported. In fact, tests at sea (e.g. in dedicated sea areas) are taking place in European waters. In the not too distant future, it is therefore foreseeable that the first intra-European commercial voyages may take place. This necessitates identifying and addressing all the issues involved, both for the ship and shore side (e.g. monitoring, management communication and control of such operations also from the authorities' side). The Commission reminds Member States that they cannot take individual positions on the interpretation of international instruments, which fall under EU exclusive competence. This is a matter of uniform interpretation of EU law.

The High Level Steering Group for Governance of the Digital Maritime System and Services (HLSG DMSS; formally established under the VTMS Directive 2002/59/EC) agreed to set up an ad hoc experts sub-group on Autonomous Shipping and Vessel Traffic Services (MASS) to start investigating and analysing how to deal with autonomous navigation and routing from the perspective of monitoring, management communication and control. This ad hoc expert sub-group developed 'EU Operational Guidelines for the Establishment of Test Areas at sea for MASS Trials'. It is to be noted that no full-scale trials with any unmanned autonomous vessel has taken place in the EU and the current situation (COVID-19) is likely to cause further delay.

Background

MSC 98 agreed to the request by Denmark et al. (MSC 98/20/2) to start a regulatory scoping exercise (RSE) with the aim of identifying IMO legislation, which may need to be amended in order to ensure that the construction and operation of MASS are carried out safely, securely, and in an environmentally sound manner. Subsequently, MSC 99 developed a draft framework for the RSE: including the preliminary definition of MASS and four levels of autonomy as well as the methodology for the exercise and the plan of work. MSC 99 also agreed that it should only review the legal instruments under its purview, but it would take a coordinating role on the whole MASS issue. MSC 100 approved the framework for the RSE, including the procedures to be followed to conclude the review. As part of this framework the Secretariat developed a web platform which was used by participating parties to submit comments.

MSC 101 besides continuing the first step approved the holding of an intersessional MASS working group from 2 to 6 September 2019. This group considered the results of the first step of the RSE and took the necessary action to commence the second step, the results of which were submitted to MSC 102.

MSC 99 also invited interested Member States and international organisations to submit proposals to MSC 100 as regards the development of interim guidelines for MASS trials. MSC 100 approved provisional principles (including being generic, high level objectives, non-prescriptive/technical, goal based, encourage sharing of information, precautionary approach) for the development of guidelines on MASS trials and invited interested parties to submit proposals for the development of the guidelines to MSC 101 taking into account these principles. MSC 101 succeeded in completing and approving the interim Guidelines for MASS trials, and the associated draft MSC circular.

Consideration at MSC 102

MSC 102/5 (Secretariat) provides a summary of the work carried out so far for developing the RSE, while MSC 102/5/1 (Secretariat) includes the outcome of the meeting of the Intersessional Working Group on Maritime Autonomous Surface Ships. Most of the other documents provided by volunteer IMO Member States set out the results of the second step of the RSE. The majority of the remaining documents identify common potential gaps/themes that would have to be analysed in a holistic manner, while some others make specific proposals for the next steps.

The outcome of step 2 of the RSE, which should be discussed and finalised in this session, is very important. Equally important are the steps thereafter. The Commission considers that IMO should not be 'flooded' with requests for new outputs to amend the IMO legal instruments, without clear prioritisation and clear objectives (e.g. type of service likely to start MASS operations first). Hence, it is important to order and prioritise the issues to be examined. This has been raised in several submissions and not only on those related to the results of the RSE. Therefore, there should be close coordination between the different IMO bodies on horizontal issues e.g. the definitions and role of the Master, crew onboard and remote operators; connectivity issues and cybersecurity; liability issues and required certification to be addressed and agreed.

Related to this issue, ISO (MSC 102/5/18) reports on its work to develop a common understanding of terminology used for MASS and definitions for the various levels of autonomy. While this work provides valuable input for IMO, there are technical elements of these definitions, which could have a relevant impact in the subsequent regulatory work. For example, the introduction of a time-based element in the automation definition. Therefore, it is considered essential that the discussions on definitions take place at MSC 102 in order to decide and, if deemed necessary, instruct ISO on its further steps.

With regard to the regulatory approach, MSC 102/5/27 (Japan) in paragraph 20.1 proposes to prioritise the so-called path I over path II, i.e. large international ships with increased automation and possibly reduced manning over smaller, unmanned and remotely controlled domestic ships.

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The framework of the regulatory work on the basis of the outcome of the RSE has still to be decided.

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Agenda item 6 – Development of further measures to enhance the safety of ships relating to the use of fuel oil**

Docs: MSC 102/6, 102/6/1-2, MSC 102/INF.18-19

MSC 102/6 (Germany): contains the report of the Correspondence Group on Development of Further Measures to Enhance the Safety of Ships Relating to the Use of Oil Fuel.

MSC 102/6/1 (China): As per lessons learned from a confirmed case caused by the use of non-compliant fuel oil provided in MSC102/INF.19 and one lesson learned that fuel oil testing and calibration laboratory should be independent and impartial suggested in MSC102/INF.18, this document provides three comments on MSC 102/6 and five proposals.

MSC 102/6/2 (Cook Islands and ICS): provide comments and propose solutions on a list of items that were either not resolved or were found to be beyond the scope of work of the Correspondence Group.

MSC 102/INF.18 (China): analyses three lessons learned from three explosions in fuel oil tanks and two explosions of components of fuel oil booster unit/systems, and raises one matter of concern.

MSC 102/INF.19 (China): provides information on a mechanical incident caused by non-compliant fuel oil that contains deleterious chemicals (organic chlorinated hydrocarbons) and three lessons learned from the incident.

EU relevance

The Union has competence on the matter.

The sulphur-in-fuel-related requirements and implementing provisions of the revised MARPOL Annex VI have been reflected in Directive (EU) 2016/802. The Energy Community countries (Montenegro, Albania, Bosnia-Herzegovina, Moldova, Serbia, and Ukraine) have adopted the sulphur-related EU environment acquis in the Energy Community Treaty in 2016 with an entry into force date of 1 June 2018.

In terms of the SOLAS aspects of operational safety and fuel oil requirements, Article 6(2)(a)(i) of Directive 2009/45/EC on safety rules and standards for passenger ships applies SOLAS, as amended, to Class A passenger ships. In this instance, SOLAS, Ch. II-2, regulation 4.2 is relevant.

In terms of fuel quality mandatory requirements and related standards under EU legislation, Articles 1 and 4 of Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil for use in road and non-road mobile applications for health and environmental reasons and introducing a mechanism to monitor and reduce greenhouse gas emissions are relevant.

Background

At MEPC 73, the Committee, having noted the discussions of the Intersessional Meeting on Consistent Implementation of Regulation 14.1.3 of MARPOL Annex VI (MEPC 73/ISWG-AP 1), invited MSC to consider the outcome of the intersessional meeting concerning the potential safety implications associated with the use of low sulphur fuel. In addition, to further address remaining concerns expressed as to the quality of fuels to be supplied to ships and to the need for advance information on their availability, the Committee invited further concrete proposals on how to enhance the implementation of Regulation 18 of MARPOL Annex VI by early collection of relevant data and related analysis; this would include the upgrade of an existing dedicated module in GISIS, IMO's web platform. At the same time, MEPC 73 adopted the amendments to MARPOL Annex VI concerning the prohibition on the carriage of fuels oils with sulphur content exceeding 0.50% (hence non-compliant with Regulation 14), both for combustion and operational purposes. With this important step, the Committee strengthened significantly the enforcement of the 0.50% sulphur limit as an essential element to ensure the consistent and correct implementation of Regulation 14, while reinforcing the level playing-field. MEPC also called on ISO to deliver a Publicly Available Specification (PAS) in relation to the quality of upcoming 0.50 fuels.

MSC 100 considered documents MSC 100/8/1 (Liberia et Al.) and MSC 100/8/2 (Bahamas et al.) which referred to potential safety implications associated with the supply and use of 2020 compliant fuels while emphasising that this was already an existing safety issue. The main issues related inter alia to stability, compatibility, flashpoint and viscosity. In this regard it should be noted that OCIMF, together with other industry organisations, developed guidance on how ships could deal with such potential issues.

*After a long discussion MSC 100 confirmed that maritime safety, including fuel safety issues, fell under its purview. It was recognised that issues related to the use of fuel were an ongoing concern and measures may need to be taken to address potential safety implications that may arise with the use of low-sulphur fuel oil. Therefore, the Committee agreed to include in its biennial agenda an output on "Development of further measures to enhance the safety of ships relating to the use of fuel oil", with a target completion year of 2021 to review existing safety provisions for fuel oil and information concerning the safety implications associated with the use of fuel oil, and to develop further measures to enhance the safety of ships relating to the use of fuel oil. **DELETED***

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MSC 101 considered documents:

- MSC 101/8 (IACS) which proposed a number of measures including identifying the current safety provisions related to fuel oil, carrying out a risk analysis of safety implications associated with the use of fuel oil, developing a new regulation to address any gaps in existing legislation as well as developing a number of procedures.*

- *MSC 101/8/1 (IACS) which set out the details for upgrading UI SC123 (endorsed by the Committee in MSC/Circ.1176 and subsequently MSC.1/Circ.1464) on the requirement for separate fuel tanks for different fuels.*
- *MSC 101/8/2 (ICS et al) which proposed: amendments to SOLAS to make mandatory reporting requirements for ships on receipt of non-compliant fuel oil and for IMO MS to take action against suppliers of such fuel oil; a platform in GISIS to report such incidents; and guidelines on taking action in the event of contradictory fuel sampling results, indicating possible non-compliance.*

DELETED *The Committee eventually took the following decisions:*

- approved a draft MSC-MEPC circular on delivery of compliant fuel oil by suppliers (which was developed by PPR 6 and also approved by MEPC 74);*
- adopted the draft MSC resolution on Recommended interim measures to enhance the safety of ships relating to the use of fuel oil;*
- endorsed the action plan for measures to enhance the safety of ships relating to the use of fuel oil; and*
- agreed to develop a platform on GISIS for reporting of non-compliance of flashpoint requirements, with a preference to integrate it to the existing platform for MARPOL Annex VI.*

The Committee requested MEPC 75 to inform it of the outcome of the investigation on reporting cases, in the GISIS module, where fuel oil suppliers delivered fuel failing to meet the requirements specified in SOLAS regulation II-2/4.2.1. (In this connection, the Commission would also recall the work being carried out by the MEPC Correspondence Group on Data Collection and Analysis under Regulation 18 of MARPOL Annex VI.) Finally, the Committee established a correspondence group, under the coordination of DE, on development of further measures to enhance the safety of ships relating to the use of oil fuel.

Consideration at MSC 102

The report of the Correspondence Group is included in document MSC 102/6. The group developed:

- draft regulations on reporting of confirmed cases where oil fuel suppliers have failed to meet the flashpoint requirements;*
- draft regulations on actions against oil fuel suppliers in confirmed cases of deliveries of oil fuel that does not comply with the requirements specified in SOLAS regulation II-2/4.2.1;*
- draft regulations on the documentation of the flashpoint of the actual fuel batch when bunkering;*

- d. *issues to be addressed by the guidelines for ships when dealing with situations where they have indicative test results suggesting that the oil fuel supplied may not comply with SOLAS regulation II- 2/4.2.1; and*
- e. *issues to be addressed by the guidelines for ships to list documents and background information on fuel properties other than flashpoint affecting ships safety.*

However, the group did not complete these initiatives and proposed that they are further discussed in a working group during MSC 102. China submitted three documents (MSC 102/6/1 and MSC 102/INF.18-19) providing comments on the report of the correspondence group as well as lessons learned from incidents, which took place on board ships involving fuel oil, including the use of non-compliant fuel. China seeks to extend the “confirmed case” definition to include fuel oil parameters not scoped in ISO8217, such as content of deleterious elements and/or chemical/physical additional properties. In addition, the paper indicates that the commercial value of de-bunkered low flashpoint fuel would be very low, unlike the de-bunkered fuels with non-compliant sulphur content. Finally, China proposes a revised definition of “confirmed case” and amendments to Resolution MSC.465(101).

In MSC 102/6/2, the Cook Islands and ICS stress the need to have control measures before fuel is supplied to ships. Therefore, the co-sponsors propose changes to the draft regulations included in MSC 102/6 in order to put more responsibility on suppliers of fuel. In particular, the co-sponsors provide elements of discussion on 1) Declaration of flashpoint; 2) Control on fuel supply side; 3) Action against suppliers in confirmed cases of deliveries of non-compliant oil fuel; 4) Sampling and documentation and 5) Actions following identification of non-compliant oil fuel on board. In addition, proposals are put forward to 1) provide ships with an oil fuel safety declaration prior to bunkering, 2) asking the Committee to encourage Member States to have “licensing schemes” for bunkering suppliers; 3) require a representative sample for safety (taken under similar conditions to the MARPOL sample, already required).

The following points should be considered at MSC 102:

- *Licensing Schemes:* **DELETED**.

- *Properties other than Flashpoint:* **DELETED**
- *De-bunkering:* **DELETED**

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Agenda item 7 – Goal-based new ship construction standards

Docs: MSC 102/7, MSC 102/7/1-7, MSC 102/INF.7, MSC 102/INF.15, MSC 102/INF.20, MSC 102/INF.24; MSC 102/J/3-4

MSC 102/7 (Secretariat): reports on the current status of all GBS Audit findings and GBS verification audits, as well as on the GBS Trust Fund.

MSC 102/7/1 (Secretary-General): contains the GBS audit report on the rectification of the non-conformities identified by the GBS Audit Team in the initial verification audit of Türk Loydu ship construction rules for bulk carriers and oil tankers.

MSC 102/7/2 (Add.1)(Secretary-General): provides the report of the second GBS maintenance verification audit of 11 recognised organisations and IACS that had successfully undergone the initial verification audit, for consideration by the Committee with a view to establishing continued conformity with the Organization's GBS Standards (resolution MSC.287(87)), taking into account the GBS Verification Guidelines (resolution MSC.296(87)).

MSC 102/7/3 (Secretariat): provides the report of the GBS Audit Team on the re-verification audit of DNV-GL ship construction rules.

MSC 102/7/4 (Secretariat): provides the observations of the audit teams who have submitted their reports to MSC 102, namely the audit report on the re-verification of DNV-GL and the final report of the second GBS maintenance of verification audit of 11 recognised organisations and IACS' Common Structural Rules for bulk carriers and oil tankers (CSR).

MSC 102/7/5 (China and IACS): proposes a unified interpretation of SOLAS regulation II-1/3-10 concerning the term "unforeseen delay in the delivery of ships" with a view to harmonising the interpretation of the provisions for the application scheme thereof with the unified interpretation to regulation 1.28 of MARPOL Annex 1.

MSC 102/7/6 (ASEF and CESA): comments on document MSC 102/7/5 (China and IACS) and provides recommendations for consideration by the Committee.

MSC 102/7/7 (Secretariat): provides the corrective action plan for the non-conformity identified by the audit team responsible for the second GBS maintenance audit of Bureau Veritas.

MSC 102/INF.7 (Secretariat): provides the status report of corrective actions taken by Türk Loydu in addressing the observations during the initial GBS verification audit, as well as corrective action taken to address the outcome of the GBS audit on rectification of non-conformities (MSC 102/7/1, annex, paragraph 4.2.2.1).

MSC 102/INF.15 (Secretariat): provides the status of the work undertaken in response to the observations of six ROs in relation to the 12 individual GBS audit reports of IACS member recognised organisations.

MSC 102/INF.20 (IACS): provides the updated status report of the work undertaken to address the IACS "common" observations as of 29 February 2020.

MSC 102/INF.24 (Secretariat): reports on the current status of all GBS Audit findings and GBS verification audits.

*MSC 102/J/3 (Secretariat): provides comments by IACS on agenda items 7 and 17.

*MSC 102/J/4 (Secretariat): provides the corrective action plan for the non-conformity of China Classification Society.

From ADD 1: These documents [102/J/3 and /J/4] provide the corrective action plans, developed by IACS and China Classification Society (CCS), to address non-conformities mentioned in MSC 107/7/2. These submissions do not affect the EU position adopted in respect of MSC 102/7/2.

EU relevance

The Union has competence on this matter.

The implications of this Agenda item on Union law were provided prior to MSC 100 in working paper 14853/2018, an extract of which is included below for ease of reference:

Article 11(1) of Directive 2009/15/EC on common rules and standards for ship inspection and survey organisations and for relevant activities of maritime administrations states that

“Each Member State shall ensure that ships flying its flag are designed, constructed, equipped and maintained in accordance with the rules and procedures relating to hull, machinery and electrical and control installation requirements of a recognised organisation.”,

while Article 11(3) of the same Directive stipulates that

“Member States shall cooperate with the recognised organisation they authorise in the development of the rules and procedures of those organisations. They shall confer with the recognised organisations with a view to achieving consistent interpretation of the international conventions.”

Furthermore, in Annex I to Regulation (EC) 391/2009, Criterion A.4 provides that

“The recognised organisation must have and apply a set of own comprehensive rules and procedures, or the demonstrated ability thereto, for the design, construction and periodic survey of merchant ships, having the quality of international recognised standards. They must be published and continually upgraded and improved through research and development programmes.”

In addition, Criterion B.7 states that

“The recognised organisations must ensure that: (a) its rules and procedures are established and maintained in a systematic manner.....(c) the requirements of the statutory work for which the recognised organisation is authorised are satisfied and an internal system to measure the quality of service in relation to compliance with the international conventions is put in place”.

Finally, in Criterion B.11 it is stipulated that

“The recognised organisation must allow participation in the development of its rules and procedures by representatives of the administration and other parties concerned.”

SOLAS Regulation 3-1 stipulates that:

“In addition to the requirements contained elsewhere in the present regulations, ships shall be designed, constructed and maintained in compliance with the structural, mechanical and electrical requirements of a classification society which is recognized by the Administration in accordance with the provisions of regulation XI-1/1, or with applicable national standards of the Administration which provide an equivalent level of safety.”

In addition to the above, Article 14(1) of Regulation (EC) No 391/2009 stipulates that

“1. The Commission shall adopt and publish: (a) criteria to measure the effectiveness of the rules and procedures as well as the performance of the recognised organisations as regards the safety of, and the prevention of pollution from, their classed ships, having particular regard to the data produced by the Paris Memorandum of Understanding on Port State Control and/or by other similar schemes;”.

However, in accordance with SOLAS Regulation 3-10 “Goal-based ship construction standards for bulk carriers and oil tankers”, the design and construction of bulk carriers and oil tankers shall take place in accordance with the rules of a classification society, acting as a recognised organisation in accordance with SOLAS Regulation XI-1/1, which have been approved as compliant with the GBS by the IMO.

As detailed in Resolution MSC.287(87) (adopted on 20 May 2010), the GBS comprises a five-tier system under which tier I sets the high-level goals while tier II sets the functional requirements that bulk carriers and tankers built after 1 July 2016 shall follow. The introduction of the GBS has changed the approach under the SOLAS convention from a prescriptive one into a target-based one. As a result, classification societies could submit their rules on design and build of ships for approval at the IMO that they comply with the high-level goals and functional requirements, so that ships built under these rules are deemed to be compliant with SOLAS. Without such an approval they are not able to design and build ships falling under SOLAS. This verification process is detailed in the Tier III requirements.

Background

During MSC 99 and MSC 100, submissions concerned mainly two distinct lines of work:

1) The IMO Goal Based Construction Standards for Oil Tankers and Bulk Carriers that applies since 1 July 2016 and draws on a specific set of goals, requirements, rules and guidelines covering the five tiers of the GBS framework. MSC 99 approved, in principle, the draft MSC resolution on Revised guidelines for verification of conformity with goal-based ship construction standards for bulk carriers and oil tankers, with a view to subsequent adoption at MSC 100. The discussion at MSC 100 centred primarily on whether it was appropriate for a new applicant to copy (mirror) from the rules of the established IACS members, as Turk Loydu had done in its application. While IACS stated that mirroring rules could involve intellectual property rights, many maintained that proprietary claims do not fall under the purview of the IMO and the existing Guidelines do not preclude anyone from using established ROs' rules. The Committee agreed with the proposals of the GBS working group to amend paragraph 10.8 of the draft Revised Guidelines in order to address the issue of "mirrored submissions" as well as protecting confidential and/or proprietary information. It was agreed that the effective date for the coming into force of the Revised Guidelines would be one year after adoption.

2) The application of the Safety Level Approach (SLA) in the GBS framework to the IMO rule-making process, which is more generic and aims i.a. at integrating relevant risk-based approaches and methodologies for rule-making, e.g. the Formal Safety Assessment (FSA). In this regard, MSC 99 approved, in principle, the draft Interim guidelines for development and application of an IMO goal-based standards safety level approach and instructed the Secretariat to prepare the associated MSC circular. The interim guidelines were approved by MSC 100.

MSC 100 also agreed that there was a need to amend the Generic guidelines for developing IMO goal-based standards (Generic Guidelines) (MSC.1/Circ.1394/Rev.1) to aid the application of the Guidelines throughout the Organization. This work continued at MSC 101 where the Committee approved the revised Generic Guidelines for developing IMO goal-based standards for circulation as MSC.1/Circ.1394/Rev.2 as well as the revised timetable and schedule of activities for the implementation of the GBS verification scheme.

Consideration at MSC 102

In MSC 102/7, the Secretariat reports on the progress achieved in the GBS verification audits of the 12 IACS member ROs and of Türk Loydu. The list of all findings (non-conformities and observations) is included in document MSC 102/INF.24. The Secretariat also informs the Committee of the rectification of non-conformities audits after the initial GBS verification audit of Türk Loydu (MSC 102/7/1), the second annual GBS maintenance audit carried out in 2019 (MSC 102/7/2), the reverification audit of DNV-GL (MSC 102/7/3), the observations of the audit teams (MSC 102/7/4) and the Corrective Action Plan submitted by Bureau Veritas (BV) for the non-conformity identified during the second GBS maintenance audit (MSC 102/7/7).

As a separate issue, IACS and China (MSC 102/7/5) propose a unified interpretation of SOLAS regulation II-1/3-10 concerning the term "unforeseen delay in the delivery of ships" in particular in view of the disruptions shipyards are facing as a result of the pandemic Covid-19. ASEF and CESA (MSC 102/7/6) support the proposal.

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Agenda item 8 - Measures to improve domestic ferry safety**

Docs: MSC 102/8 (+Add.1), MSC 102/8/1-6, MSC 102/INF.12-13

MSC 102/8 (Secretariat): reports on the progress made in the context of measures to improve domestic ferry safety as agreed at MSC 101.

MSC 102/8/Add.1 (Secretariat): reports on the outcome of the Expert Group Meeting on Domestic Ferry Safety which was to be held at the United Nations Conference Centre (UNCC) in Bangkok, Thailand, on 17 and 18 March 2020.

MSC 102/8/1 (China): proposes to develop an outline for the online training course on domestic ferry safety from an educational and training standpoint, and make an alignment with the upcoming model regulations and related guidelines. Moreover, the annex of the document provides an online training course on domestic ferry safety, which is to be reviewed by all parties, therefore on this basis, cooperation can be carried out to develop an online training course.

MSC 102/8/2 (China): provides a draft framework of guidance on the incorporation of Model Regulations on Domestic Ferry Safety in domestic law in accordance with decisions taken in MSC 101.

MSC 102/8/3 (China): proposes measures to address challenges identified in workshops and training conducted by China over the last 3 years on domestic ferry safety.

MSC 102/8/4 (Indonesia): provides a basis for consideration in the development of model regulations on domestic ferry safety.

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MSC 102/8/5 (Islamic Republic of Iran): provides comments on document MSC 102/8 regarding the report on the progress made since the last session of the Committee, submitted by the Secretariat, and contains proposals for inclusion of a number of important issues among the causes for accidents involving domestic ferries, as well as important issues to be addressed in the draft model regulations.

MSC 102/8/6 (Philippines): provides comments on document MSC 102/8 (Secretariat).

MSC 102/INF.12 (Republic of Korea): provides information on inflatable buoyancy support system against flooding of ships.

MSC 102/INF.13 (Republic of Korea): provides information on simulation database-based decision support for incident response of ferries.

EU relevance

The Union has competence on this matter.

Directive 2009/45/EC, as amended, sets out rules on passenger ship safety for ships engaged in domestic voyages.

Background

At MSC 100, China (MSC 100/19/6) pointed out the tragic and ongoing loss of life due to domestic ferry accidents, not least in China itself. It proposed a comprehensive series of actions by the IMO to address this continuing problem – study on elements affecting ferry safety; technical guidance in implementing/enforcing rules/regulations; technical cooperation and capacity building; sharing of ferry safety management experience and lessons learned from accidents; seminars. In MSC 100/19/10 the Secretariat presented the extensive and widespread assistance it provided in terms of training and workshops over the years in many parts of the developing world. MSC 100 decided that such an issue could only be discussed in detail if it was subject to a new output with concrete proposals.

At MSC 101, China (MSC 101/21/20) followed up on its submission at MSC 100 by requesting the Committee to establish a new output for the MSC to develop a comprehensive approach to improve domestic ferry safety. The output aims to develop two voluntary guidelines – one encompassing model regulations on domestic ferry safety, and the other on the incorporation of model regulations into domestic law - as well as a capacity-building programme to facilitate legislative activities on domestic ferry safety. The Committee agreed to establish a new agenda item on "Measures to improve domestic ferry safety" at MSC 102 but taking into consideration the suggestion of the IMO Secretariat (MSC 101/23/1) that this work should be carried out under existing output OW 33 (Finalization of a non-mandatory instrument on regulations for non-convention ships), with four sessions needed to complete the work.

Given the EU's own legislation in place for safety of passenger ships engaged on domestic voyages as well as experience and response to tragic ferry accidents (mainly international) – Herald of Free Enterprise, Estonia, Samina, Lisco, Norman Atlantic – in particular related to the development of legislation for domestic ferries, there is much that can be shared with other IMO Member States. In fact, the Commission and EMSA already share such experiences with third countries participating in the SAFEMED (Mediterranean Sea region) and BCSEA (Black and Caspian Sea regions) projects as well as with other countries (the latest being Indonesia in December 2019). All the examples of accidents indicated here are RoPax. However, the Commission notes that the definition of “ferry” in this Agenda Item is not limited to RoPax and covers any kind of passenger ship.

Consideration at MSC 102

In MSC 102/8, the Secretariat describes the initiatives that it had taken with different stakeholders to explore ways on how domestic ferry safety can be improved in developing countries. The document also proposes the basic structure of the framework Model Regulations on Domestic Ferry Safety with the aim of completing them by MSC 105 (2022). MSC 102/8/Add.1 (Secretariat) reports that the participants at the Expert Group Meeting on Improving Domestic Ferry Safety in Support of Safe Maritime Connectivity in Asia and the Pacific, organised by the IMO and UNESCAP, supported the structure of the Model Regulations and proposed some definitions. This meeting was followed by the Bangkok Declaration 2020 on enhancing the domestic ferry safety in Asia and the Pacific region and the development on model regulations on domestic ferry safety. That declaration expresses the commitment to the development of a Convention on Domestic Ferry Safety, Intergovernmental Agreement on Domestic Ferry Safety or framework Model Regulations on Domestic Ferry Safety or a combination of the above. Nevertheless, at least for the moment, the current task for this agenda item aims to develop framework Model Regulations.

Indonesia (MSC 102/8/4), Iran (MSC 102/8/5) and Philippines (MSC 102/8/6) commented on MSC 102/8 identifying additional issues to be included in the Model Regulations or to be considered for progressing the work, such as guidelines previously drawn up in regional seminars on the subject, a less prescriptive and more goal-based approach to regulation and additional basic requirements needing to be considered.

The most prominent country addressing this issue is China. It submitted three documents: MSC 102/8/1 proposing a draft outline of an online training course on domestic ferry safety; MSC 102/8/2 proposing a draft framework of guidance on the incorporation of model regulations on domestic ferry safety into domestic law; and MSC 102/8/3 proposing additional measures to enhance the safety of domestic ferries, in particular through technical assistance and information sharing.

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Agenda item 9 – Measures to enhance maritime security**

Docs: MSC 102/9, MSC 102/9/1, MSC 102/INF.23

MSC 102/9 (Secretariat): provides information on submission of security-related information through the Maritime Security module of the Global Integrated Shipping Information System (GISIS), including the electronic transfer of information into and from the module, work under the UN global counter terrorism coordination compact, and the global programme for Enhancement of Maritime Security.

MSC 102/9/1 (WCO): provides information on WCO initiatives to develop measures for passenger facilitation and control in the maritime environment in general, and for cruise ships in particular, through the use of standardised API and PNR data; the outcomes of the 82nd session of the WCO Policy Commission that was held from 3 to 5 December 2019 in Seoul, Republic of Korea, on the way forward relating to the initiatives; and potential cooperation between WCO and IMO in this area.

MSC 102/INF.23 (WCO): provides information on a report prepared by WCO Members through the Brussels-Based (Customs) Attaché Working Group (BBAWG). The report is entitled "Brussels-Based Attaché Working Group on Cruise Ships, Way Forward to Improve Cruise Ship Controls - A Customs Perspective" (Final Cruise Ship Report).

EU relevance

The Union has competence on the matter.

Regulation (EC) No 725/2004 and Directive 2005/65/EC implement the maritime security regime agreed by the IMO in December 2002 in SOLAS chapter XI/2 and the International Ship and Port Facility Security (ISPS) Code. In particular, Article 3(5) of Regulation (EC) No 725/2004 renders some provisions of Part B of the ISPS Code mandatory, including the reporting and exchange of relevant information. In this regard, Directive 2010/65/EU on reporting formalities includes in its Appendix the security form and details that should be reported prior to a ship calling at an EU port, including the list of the last 10 calls at port facilities that should be available for exchange, upon request, using the Union Maritime Information and Exchange System (SafeSeaNet) established in accordance to Directive 2002/59/EC (VTMIS Directive).

GISIS Maritime Security Module

Background

In 2016, MSC 97 agreed to proceed with the proposals made by the Secretariat (MSC 97/4/1) concerning the development of a data transfer mechanism for the Maritime Security Module of GISIS to facilitate the transfer and updating of such information directly from national databases, which are updated locally. MSC 98 endorsed the draft guidance for the electronic transfer of information into the Maritime Security Module of GISIS. The EU supported this development. The EU Member States at the 4th SafeSeaNet / LRIT Group meeting held on 23 October 2018, supported an initiative to request IMO to further develop web services for downloading port facility codes from GISIS Maritime Security Module. EMSA held discussions with the IMO on this possibility. In view of this MSC 100 agreed to invite the Secretariat to develop the download functionality and the updated guidance for the electronic transfer of information to and from the Maritime Security module of GISIS were approved at MSC 101 in June 2019 (MSC 101/4/3).

Consideration at MSC 102

MSC 102/9 (Secretariat) highlights maritime security related developments since MSC 101. In accordance with the request by the Secretariat, the Member States are encouraged to continue to review and keep updated their information held in the GISIS Maritime Security Module. The Secretariat also informs the Committee that it had developed a functionality to allow administrations to download information from the GISIS module using web services. EMSA is now in the process of developing the link between SafeSeaNet and the GISIS Maritime Security Module. The automatic link between the EMSA Central Location Database (CLD) and the IMO GISIS is planned to be established in the last quarter of 2020. The development of web-services to download the information will reduce the administrative burden but will also ensure up-to-date information in the CLD as well as to the Member States' national systems (SafeSeaNet and National Single Window).

IMO/WCO Passenger Facilitation and Control

EU relevance

The Union has competence on this matter.

Under IMO's Facilitation Convention (applied by all EU MS) and applicable to international voyages, Member States can request the passenger list from all types of ships – including cruise vessels, ferries and ro-ro passenger ships as well as for passengers carried on cargo ships. Directive 2010/65/EC on reporting formalities requires Member States to use the appropriate FAL form when so doing – in this case, FAL 6 Passenger List. Under Annex VI of the Schengen Borders Code, Regulation 562/2006, section 3.2.1- 3.2.4 deals with specific check procedures for cruise ships notably the provision in advance of passenger and crew lists to the port of arrival for international voyages from outside the EU.

Background

In MSC 102/9/1 WCO reports on developments in the requirements for Advanced Passenger Notification and Passenger Number Records. In recognition of the growth in cruise industries, WCO saw the need for improved infrastructure facilitation and security needs for cruise ships when calling at ports. The Brussels-Based Customs Attaches WG of the WCO undertook a study and prepared a report with recommendations on Cruise ships – the way forward to improve cruise ship controls, subsequently endorsed by WCO's Policy Commission. The report advocates a global API and PNR for cruise ships, the setting up of a working platform and a new Passenger Controls and Facilitation (PCF) WG. The potential future work includes developing an understanding of how and by whom reservation data is captured, when such information is available, and how it could be reused for regulatory purposes. Other relevant topics would be the data sharing aspects, interagency cooperation, and the legal framework related to the use of API and PNR data in the maritime environment, including data protection and privacy policies. Involvement of IMO in this task is deemed essential.

On 2 December 2019, the Council adopted conclusions on “Widening the scope of passenger name record (PNR) data legislation to transport forms other than air traffic”. The conclusions note that some Member States have acknowledged the potential added value of extending PNR data collection to other transport modes for the fight against terrorist offences and serious crime, while also taking stock of the concerns voiced by some Member States regarding the legal, technical and financial challenges this could create, in particular with regard to fundamental rights and the principles of proportionality and necessity.

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Agenda item 10 – Piracy and armed robbery against ships**

Docs: MSC 102/10, MSC 102/10/1-6, MSC 102/INF.11, MSC 102/INF.22

MSC 102/10 (Secretariat): reports on developments related to piracy and armed robbery against ships since MSC 101, including a summary of the piracy and armed robbery incidents for 2019; requests Member States to submit reports on incidents to the Secretariat and recalls previous discussions related to validation of reports received and appointment of national points of contact; requests Member States to submit information on conditions for allowing privately contracted armed security personnel in territorial waters; and provides updates on the situation in the Gulf of Guinea.

MSC 102/10/1 (Greece): presents Greece's experiences from piracy and armed robbery attacks against ships off the West African coast during the year 2019 and reiterates its significant concerns as regards their recent increase. Restoration of security in the affected areas will ensure effective maritime governance and growth, as well as promote the image of the industry and of the seafaring profession.

MSC 102/10/2 (France): informs the Committee of the current initiatives being conducted in the Gulf of Guinea in cooperation with the States of the region. The various cooperation actions in the Gulf of Guinea are long-term investments and if new actions are to be initiated, they should take into account existing initiatives.

MSC 102/10/3 (ICS, BIMCO, OCIMF, INTERTANKO and INTERCARGO): highlights the concerns for the security and safety of seafarers serving in the Gulf of Guinea, outlines the steps being undertaken by the industry and suggests additional steps that could be considered to protect seafarers in the Gulf of Guinea. Finally, it calls for the formation of a working group on maritime security to allow all stakeholders the ability to outline their plans and to ascertain the best steps forward to assure seafarer safety.

MSC 102/10/4 (Argentina, Bolivia (Plurinational State of), Colombia, Mexico, Peru and Uruguay): analyses the findings of a regional study on incidents of piracy and armed robbery against ships registered in the GISIS module of the same name, and of the annual reports published by IMO, and requests the Committee to implement a mechanism for the prior validation of the information by coastal States, in order not to compromise the integrity of GISIS statistics.

MSC 102/10/5 (Nigeria): provides information on Nigeria's efforts to address threats posed by attacks against vessels, piracy and kidnap of seafarers in the Gulf of Guinea and indeed, within Nigerian waters, including participation in a round-table consultative meeting with the IMO Secretary-General and industry, hosting of a Global Maritime Security Conference in Abuja, and major investment in the Deep Blue Project to build a new security architecture. Nigeria will continue to collaborate with industry every step of the way, with the singular aim of jointly arriving at an effective maritime security solution.

MSC 102/10/6 (ICS, BIMCO, OCIMF, INTERTANKO and INTERCARGO): comments on MSC

102/10/3 and confirms to the Committee the development of new best practices guidance for the West Africa region titled Best Management Practices West Africa, Best Management Practices to enhance maritime security for Vessels & Mariners Operating Off The Coast of West Africa including the Gulf of Guinea (BMP WA) and invites the Committee to consider amending MSC.1/Circ.1601 to replace annex 3 with the BMP WA guidance.

MSC 102/INF.11 (ReCAAP-ISC): provides an update on the situation of piracy and armed robbery against ships in Asia in 2019, and the activities carried out by the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia – Information Sharing Centre (ReCAAP -ISC) since the last update at MSC 101 in June 2019.

MSC 102/INF.22 (Ghana): provides information on actions by Ghana at the national, regional and international level in support of maritime security in the Gulf of Guinea.

EU relevance

The Union has competence on the matter.

Customary international law provides for universal jurisdiction for acts of piracy. In accordance with Article 21 TEU, the Union needs to act in accordance with international law (including customary international law). In addition, the Union is a party to UNCLOS, which defines piracy.

Recital 2 in Regulation 725/2004 on enhancing ship and port security includes a reference to piracy: "The security of European Community shipping and of citizens using it and of the environment in the face of threats of intentional unlawful acts such as acts of terrorism, acts of piracy or similar, should be ensured at all times, while article 2.5 of the said Regulation defines maritime security as "the combination of preventive measures intended to protect shipping and port facilities against threats of intentional unlawful acts."

Commission Recommendation 2010/159 of 11 March 2010 on measures for self-protection and the prevention of piracy and armed robbery against ships requests Member States to ensure the effective and harmonised application of preventive measures to deal with the threats which ships may face during acts of piracy and armed robbery. It also notes the importance of the 'Best Management Practices' (BMP) developed by the industry and which offer practical advice on how to minimise the risk for ships of attack by pirates (the annex includes the Best management practices to deter piracy in the Gulf of Aden and off the coast of Somalia).

The Commission has also undertaken various initiatives itself in recent years, for example:

- *the 2014 EU Maritime Security Strategy (EUMSS, with its revised 2018 Action Plan), which includes the fight against Piracy;*
- *the EU Strategy for the Gulf of Guinea with a number of Piracy-related EU projects financed by the EU budget;*
- *the ongoing EU-CSDP EU NAVFOR Somalia Operation ATALANTA; and*
- *the EU “Coordinated Maritime Presences” (CMP) Concept, welcomed by EU MSs last year, and with a Pilot case to start and tackle the Piracy problem in Gulf of Guinea.*

The Commission underlines the need for prior circulation of submissions in this area of shared competence. In this regard it notes that both Greece and France had consulted the Commission before submitting their proposals to the IMO.

Background

At MSC 101, India (MSC 101/18/3) proposed the establishment of a contact group to coordinate international efforts towards eradication of piracy in the Gulf of Guinea, similar to the contact group for the Indian Ocean. Many industry organisations supported the proposal maintaining that the forum will enhance cooperation on common activities, technical assistance and clear action. However, several Member States did not support the proposal as it would duplicate the work already being carried out by the Friends of the Gulf of Guinea (FOGG) mechanism under the G7++ framework. These delegations noted that there was no failure in governments’ structures like what happened in the case of Somalia. The countries involved were already committed to eradicate piracy and armed robbery from the region. In fact, some of them delivered lengthy interventions providing information on initiatives they had taken to enhance maritime security, including investments in vessel traffic management systems as well as enhanced coast guard controls and training of personnel (some of these improvements were the subject of EU financed projects). Therefore, they saw no benefit in establishing an additional separate mechanism. The major flag states as well as many other delegations, while recognising the problems that piracy and armed robbery caused to ships flying their flag, also noted that they did not wish to see the issue subject to different mechanisms.

The IMO Secretary General stressed the need for more concrete and cohesive actions by all stakeholders to solve this issue. He promised that the IMO, while recognising the efforts being taken by the coastal states and the Friends of the Gulf of Guinea, will take appropriate action to facilitate dialogue between stakeholders, to strengthen the legal framework, and to enhance security architecture.

Consideration at MSC 102

In MSC 102/10, the Secretariat reports that there was an overall decrease in the number of incidents of piracy and armed robbery against ships last year when compared to the previous year, with West Africa still being the region with the highest number of incidents. It is unfortunate to note that, in the Gulf of Guinea (West Africa) while the number of incidents decreased between 2018 and 2019, the number of kidnapped and missing crew almost doubled during the same period. In this regard the Secretariat also reports on the meetings carried out by the G7++ Friends of the Gulf of Guinea as well as meetings involving the Nigerian Maritime Administration and Safety Agency (NIMASA) and its support for the Interregional Coordination Centre (ICC) in Yaoundé.

Documents MSC 102/10/1 (Greece), MSC 102/10/2 (France), MSC 102/10/3 (ICS et al) and MSC 102/10/5 (Nigeria) again raise the challenges that the rise in piracy and armed robbery in the Gulf of Guinea is posing to shipping. These documents note the initiatives (including EU actions) already taken to eradicate the problems of piracy and armed robbery in the region but emphasise that further concerted action needs to be taken. In MSC 102/10/3, the co-sponsors also propose that a working group, or some other technical group, is established at MSC 102 in order to discuss the issue in more detail. In addition, the co-sponsors of MSC 102/10/6 announce the development of new best practices guidance for the West Africa region (BMP WA) and invites the Committee to consider amending MSC.1/Circ.1601 to replace annex 3 with the BMP WA guidance. The Commission considers that this proposal should be supported.

DELETED

Agenda item 12 – Formal safety assessment**

Docs: MSC 102/12, MSC 102/12/1

MSC 102/12 (Chair of the FSA Experts Group): reports on the outcome of the intersessional meeting of the Formal Safety Assessment (FSA) Experts Group.

MSC 102/12/1 (IACS): provides comments on the report of the Experts Group on Formal Safety Assessment (MSC 102/12) on the Procedure for identifying safety issues.

EU relevance

The Union has competence on the matter.

The issue from the intersessional meeting of the Formal Safety Assessment (FSA) Experts Group relates to the review of the FIRESAFE I and II studies regarding fire safety of ro-ro decks on passenger ships. As noted in MSC 102/12, this issue was dealt with by the SSE Sub-Committee, the outcome of which will be discussed under agenda item 19 of this MSC session. The EU should note the progress made in relation to the two studies.

Agenda item 13 – Human element, training and watchkeeping (report of the sixth session of the Sub-Committee)

Docs: MSC 102/13, MSC 102/13/1-3

MSC 102/13 (Secretariat): invites the Committee to take action on matters emanating from HTW 6, other than urgent matters which were considered at MSC 101.

MSC 102/13/1 (Secretariat): provides information regarding competent persons made available or recommended by STCW Parties for inclusion in the list of competent persons maintained by the Secretary-General in accordance with section A-I/7 of the STCW Code, for approval by the Committee. The document also provides information about the competent persons who have been withdrawn by the Parties.

MSC 102/13/2 (Secretariat): provides information on the establishment of a joint ILO/IMO working group to identify and address seafarers' issues and the human element following the recommendation emanating from the Sectoral Meeting on the Recruitment and Retention of Seafarers and the Promotion of Opportunities for Women Seafarers held by ILO in Geneva from 25 February to 1 March 2019.

MSC 102/13/3 (ICS): comments on the report of the sixth session of the Sub-Committee on Human Element, Training and Watchkeeping, specifically the action requested of the Committee to adopt the draft MSC resolution on amendments to table B-I/2 of the STCW Code. It proposes a minor correction to the "Notes" located under the draft revised table to ensure their alignment with the provisions of the STCW Convention and Code.

Consideration at MSC 102

DELETED

Agenda item 14 – Implementation of IMO instruments (report of the sixth session of the Sub-Committee)

Docs: MSC 102/14, MSC 102/14/1

MSC 102/14 (Secretariat): invites the Committee to take action on matters emanating from III 6.

MSC 102/14/1 (Norway, Russian Federation, United Arab Emirates and IACS): proposes revisions to paragraph 6.5.5 of the draft Model agreement for the authorization of recognized organizations acting on behalf of the Administration, with a view to its practical and clear implementation.

EU relevance

The Union has competence on this matter.

The EU established several EU positions for III 6 (w. doc. 9523/1/19 Rev 1). These positions must be followed when considering the action points mentioned in document MSC 102/14 (Secretariat).

DELETED

As regards this action point, Norway et. al. submitted document MSC 102/14/1 to again request changes to paragraph 6.5.5 of the Model Agreement which in their view would better align it with the RO Code.

*When the Model Agreement was referred to MSC 101 for approval, the Marshall Islands, the Russian Federation and IACS (MSC 101/10/2) proposed a number of editorial and substantial amendments. They argued that some terminologies and requirements included in the draft Model Agreement go beyond the remit of recognized organizations and would therefore be detrimental to the successful conclusion of such agreements with Administrations: **DELETED***

DELETED

*However, MSC 101 rather than taking a decision agreed to refer the matter back to III 6 for advice. III 6 took on board some of the proposed editorial amendments and finalised the draft MSC-MEPC circular on the revised Model Agreement with a view to submission to MEPC 75 and MSC 102 for approval. However, IACS, was not satisfied with this outcome and, supported by Russia and Bahamas, made a strong statement on the impracticability of implementing the text of the second half of the sentence in paragraph 6.5.5 of the draft Model Agreement, as this would mean that classification societies would have to report to flag States all types of deficiencies without limitation, resulting in a considerable administrative burden for administrations. **DELETED**.*

DELETED

Agenda item 15 – Carriage of cargoes and containers (report of the sixth session of the Sub-Committee)

Docs: MSC 102/15, MSC 102/INF.14

MSC 102/15 (Secretariat): invites the Committee to take action on matters emanating from CCC 6.

MSC 102/INF.14 (Republic of Korea): provides the fatigue test results of 40 mm thick high manganese austenitic steel for cryogenic service to increase the maximum allowable thickness.

Consideration at MSC 102

*Document MSC 102/15 (Secretariat) includes the action points that the Committee is expected to take with respect to the outcome of CCC 6. **DELETED***

Agenda item 16 – Navigation, communications and search and rescue (report of the seventh session of the Sub-Committee)

Docs: MSC 102/16, MSC 102/16/1-5, MSC 102/INF.16

MSC 102/16 (Secretariat): invites the Committee to take action on matters emanating from NCSR 7.

MSC 102/16/1 (IMSO): provides information to the Committee about the closure of Inmarsat F77 by 1 December 2020 and invites IMO Member Governments to issue a notice to all concerned regarding the termination of Inmarsat F77 service.

MSC 102/16/2 (Philippines): contains information regarding intended designation of archipelagic sea lanes in the Philippines.

MSC102/16/3 (IMSO): provides comments on cost implications issues related to the dissemination of Maritime safety information (MSI) over multiple recognised mobile satellite services described in paragraph 2.7 of document MSC 102/16 (Report of NCSR 7) and sets out some options to resolve this issue.

MSC 102/16/4 (Canada, France and the United States): comments on document MSC 102/16 (Report of NCSR 7) regarding cost implications related to multiple recognised mobile satellite services and proposes solutions to mitigate them.

MSC 102/16/5 (New Zealand): comments on document MSC 102/16 regarding the introduction of new recognised GMDSS mobile satellite service providers, supports concerns regarding the increasing associated costs to Maritime safety information (MSI) providers, notes that these costs also apply to Search and rescue (SAR) information providers, and further notes additional resource and financial implications unless a new MSI monitoring model is adopted.

MSC 102/INF.16 (IMSO): informs the Committee that the Public Service Agreement between IMSO and Iridium was concluded and the Letter of Compliance was issued to Iridium.

EU relevance

DELETED

DELETED

The IHO in document MSC 102/21/15 notes that it intends to submit draft amendments for both resolution MSC.232(82) and MSC.1/Circ.1503/Rev.1 to NCSR 8. IHO believes that the revision to resolution MSC.232(82) can be completed in one session.

DELETED

Agenda item 17 – Ship Design and Construction (report of the seventh session of the Sub-Committee)

Docs: MSC 102/17, MSC 102/17/1-2, MSC 102/J/3

MSC 102/17 (Secretariat): invites the Committee to take action on matters emanating from SDC 7.

MSC 102/17/1 (Belgium and the United States): comments on section 7 of the report from SDC 7 related to the development of a new draft SOLAS regulation II-1/25-1 on requirements for water level detectors for non-bulk carrier cargo ships with multiple cargo holds.

MSC 102/17/2 (Vanuatu and IMCA): comments on the report of the Working Group on the Carriage of more than 12 Industrial Personnel (IP) on board Vessels engaged on International Voyages, which met during SDC 7, in respect of its' discussions on grandfathering provisions under the draft new SOLAS chapter XV and the draft IP Code.

*MSC 102/J/3 (Secretariat): provides comments by IACS on agenda items 7 and 17.

EU relevance

The EU established several EU positions for SDC 7 as set out in working document 5571/1/20 REV 1 of 3 February 2020. In the view of the Commission, the outcome of SDC 7, as set out in the action points mentioned in document MSC 102/17 (Secretariat), is in line with these previously established EU positions and can therefore be accepted. The action points and relevant EU position are listed below for ease of reference.

DELETED

(i) Action points 2.13 and 2.14. While Action point 2.13 relates to draft amendments for watertight doors on cargo ships, Action point 2.14 asserts that the amendments in 2.13 will have no impact on existing ships and, therefore, the Committees could apply them to all ships. The Commission would point out that while these amendments are supposed to concern only cargo vessels, in practice the amendments relating to the Load Lines Convention (annex 9 of the SDC 7 report) will apply equally to passenger ships. In this case, EU has competence. Article 6(2)(a)(i) of Directive 2009/45/EC on safety rules and standards for passenger ships applies SOLAS, as amended, to Class A passenger ships. Hence, for this action point, an EU position is required..

DELETED

(ii) *Action point 2.16 requests approval of the draft amendments to the 1988 LL Protocol, taking into account the Sub-Committee's view that the proposed amendments could be treated as minor corrections in accordance with C/ES.27/D, paragraph 3.2(vi), with a view to subsequent adoption at MSC 103 (paragraph 15.4 and annex 15). The Load Lines Convention/Protocol is directly applicable to domestic passenger ships under 2009/45/EC, especially through the amendment introduced by the Commission Delegated Regulation (EU) 2020/411 of 19 November 2019.*

DELETED

DELETED

Agenda item 19 – Ship systems and equipment (urgent matters emanating from the seventh session of the Sub-Committee)

Docs: MSC 102/19, MSC 102/19/1

MSC 102/19 (Secretariat): the Committee is invited to take action on matters emanating from SSE 7.

MSC 102/19/1 (United Kingdom, United States and IACS): proposes amendments to resolution A.658(16) on Use and fitting of retro-reflective materials on life-saving appliances, taking into account the outcome of A 31, with the goal of better reflecting the current practices of test laboratories involved in accelerated weathering testing.

EU relevance

*The EU established several EU positions for SSE 7 as set out in working document 6289/1/20 REV 1 of 24 February 2020. The basis for these positions is Article 6(2)(a)(i) of Directive 2009/45/EC (that applies to vessels operating domestically carrying more than 12 passengers) which applies SOLAS, as amended, to Class A passenger ships. **DELETED***

DELETED

Agenda item 21 – Work programme

Docs: MSC 102/21, MSC 102/21/1-25, MSC 102/INF.2-6

MSC 102/21 (Secretariat): As requested by MSC 101, this document contains a revised list of outputs prepared by the Secretariat, allocating the Committee's outputs currently under "Other work" to suitable Strategic Directions, for consideration by the Committee and eventual submission to Council for endorsement.

MSC 102/21/1 (Marshall Islands, IACS and SIGTTO): proposes a new output to conduct a focused review of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code), as amended by resolution MSC.370(93).

MSC 102/21/2 (Russian Federation): contains a proposal for the prohibition of the use of materials containing asbestos in the structure of mobile offshore drilling units. The proposal relates to specifying regulation 2.10.3 of chapter 2 of the MODU Code 2009 (resolution A.1023(26), as amended) and development of respective interpretations thereto.

MSC 102/21/3 (Marshall Islands, Singapore, IACS and WSC): proposes a new output to be included in the biennial agenda of the Sub-Committee on Ship Systems and Equipment (SSE) to evaluate the adequacy of fire protection, detection and extinction arrangements on board containerhips to fight container fire, with a view to amending SOLAS and the FSS Code, as required.

MSC 102/21/4 (Japan, Norway and Singapore): proposes a new output to amend SOLAS and to develop and revise relevant IMO instruments in order to introduce VDES and to ensure its appropriate use.

MSC 102/21/5 (+Corr.1) (France, Monaco, New Zealand, Spain and Vanuatu): proposes a new output for the extension of the emergency towing arrangements, already applicable to tankers of not less than 20,000 tonnes deadweight, to all types of large new ships, as today's ships' size no longer allows emergency towing without suitable equipment.

MSC 102/21/6 (Belgium, Estonia, France, Germany, Ireland, Singapore and CIRM): proposes a new output for the Sub-Committee on Navigation, Communications and Search and Rescue (NCSR) for the development of performance standards for a digital navigational data system (NAVDAT) for the reception of maritime safety and security-related information.

MSC 102/21/7 (+Corr.1)(Bahamas, Germany, IUMI, BIMCO and CESA): proposes a new output on the need for amendments to regulations in SOLAS chapter II-2 regarding enhanced provisions for early fire detection and effective control of fires in containerised cargoes stowed on and under deck of containerhips.

MSC 102/21/8 (Islamic Republic of Iran): proposes a new output on partial revision of COLREG, 1972 for vessels carrying special types of cargo. It is in response to the tragic collision between MT Sanchi and MV CF Crystal on 6 January 2018 and subsequent loss of lives of 32 seafarers on board MT Sanchi.

MSC 102/21/9 (Rev.1) (Brazil, the Marshall Islands and INTERCARGO): proposes a new output to amend SOLAS chapter XII on additional safety measures for bulk carriers and to revise the Unified interpretations of SOLAS regulations XII/4.2 and XII/5.2 (MSC/Circ.1178) in order to close gaps in these regulations that were identified during the flag State's marine safety investigation of the loss of the Stellar Daisy.

MSC 102/21/10 (Brazil, Marshall Islands, BIMCO and INTERCARGO): proposes amendments to the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code). The aim of this proposal is to address safety issues that were identified during the flag State's marine safety investigation of the loss of MV Stellar Daisy.

MSC 102/21/11 (EU and the United Kingdom): proposes a new output to be considered by the Sub-Committee on Ship Systems and Equipment (SSE) concerning a further review and revision of the International Code for Application of Fire Test Procedures, 2010 and relevant fire test procedures.

MSC 102/21/12 (Bahamas, Panama, CLIA and IACS): proposes a new output for the review of the guidance associated to SOLAS provisions on safe return to port for passenger ships, as contained in MSC.1/Circ.1369 and other related circulars.

MSC 102/21/13 (Vanuatu): Containers lost at sea represent a potential danger to maritime safety and a threat to the environment, particularly with regard to the plastics they contain. This document proposes a new output on measures to facilitate the detection, reporting, positioning, tracking and recovery of containers lost at sea.

MSC 102/21/14 (Norway): comments on document MSC 102/21/1, in particular on the proposed scope for the new output.

MSC 102/21/15 (IHO): provides comments on document MSC 102/16, in particular the proposed revision of resolution MSC.232(82) highlighted as proposed in IHO's report on monitoring of ECDIS issues to NCSR 7 (NCSR 7/22/5).

MSC 102/21/16 (Japan): provides comments on document MSC 102/21/1 and proposes to expand the scope of a new output to conduct a focussed review of the IGC Code.

MSC 102/21/17 (IACS): comments on document MSC 102/21/10 proposing a new output to amend the 2011 ESP Code.

MSC 102/21/18 (China): comments on the proposal put forward in document MSC 102/21/8, paragraph 14, related to the revision of COLREG concerning lights and day signals for vessels carrying special types of cargo, and provides further recommendations.

MSC 102/21/19 (EU, BIMCO and WSC): provides comments on document MSC 102/21/13 regarding containers lost at sea. Such incidents represent a potential danger to maritime safety and a threat to the environment, particularly if they contain plastic or hazardous materials. This document expresses general support for a new output, and draws attention to the operational system at European Union level for the detection and reporting of containers lost at sea enhancing the positioning, tracking and recovery of such containers which could serve as an inspiration for a system at the international level.

MSC 102/21/20 (Republic of Korea): provides comments on document MSC 102/21/1 (Marshall Islands, IACS and SIGTTO), which proposes a new output for a focused review of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, as amended by resolution MSC.370(93) (hereinafter referred to as the revised IGC Code).

MSC 102/21/21 (IACS): provides comments on document MSC 102/21/9 proposing a new output to amendment SOLAS chapter XII and MSC/Circ.1178.

MSC 102/21/22 (CLIA): provides additional relevant information to supplement the proposal in document MSC 102/21/12 for a new output to review the Interim Explanatory Notes for the assessment of passenger ship systems' capabilities after a fire or flooding casualty (MSC.1/Circ.1369).

MSC 102/21/23 (OCIMF): provides comments on the proposal given in document MSC 102/21/8. OCIMF proposes that the human element issues in annex 2 of the document be properly reassessed before considering a new output to revise COLREG, 1972, for vessels carrying special types of cargo.

MSC 102/21/24 (Liberia, ICS, ICHCA, P&I Clubs, IVODGA, ITF and WSC): comments on the proposals for a new output related to the mitigation of container fires on board containerships and recommends a holistic, methodical and analytical approach that includes consideration of prioritising risk prevention and mitigation enhancement, as well as taking into account recent relevant amendments to SOLAS.

MSC 102/21/25 (United Kingdom): comments on the proposal contained in document MSC 102/21/6 for a new output on the development of performance standards for a digital navigational data system (NAVDAT) and proposes additional work.

MSC 102/INF.2 (IUMI): provides information about the economic aspects of containership fires, indicating the need to review the regulations in SOLAS chapter II-2 for the avoidance of damage to containerships, as well as containerised cargoes stowed under deck and on deck of containerships.

MSC 102/INF.3 (IUMI): is related to document MSC 102/21/7 and provides further information for the assessment of the need to review the regulations in SOLAS chapter II-2 for the avoidance of damage to containerships and containerised cargoes stowed under deck and on deck of container ships.

MSC 102/INF.4 (France): provides quantitative evidence of the increasing use of the English Channel by very large commercial vessels. This trend, which particularly applies to containerships, passenger and ro-ro ships, is often mentioned as a maritime safety risk factor.

MSC 102/INF.5 (France): is a summary of the towing exercise between a large container ship, the CMA CGM Marco Polo and the response, assistance and rescue tug Abeille Languedoc, carried out on 21 July 2017 off Le Havre (France).

MSC 102/INF.6 (France): offers the main performances of navigational data system (NAVDAT) and provides some applications of the system, as additional information to the proposal in document MSC 102/21/6 on a new output for the development of performance standards for NAVDAT shipborne receptors.

- **VHF Data Exchange System (VDES) (MSC 102/21/4)**

EU relevance

The Union has competence on this matter.

This subject is important for the EU in view of the use of AIS data in accordance with Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system (VTMIS Directive), as well as the possible use of VDES for the transmission of reporting formalities required in accordance with Regulation (EU) 2019/1239 establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU (EMSWe Regulation). In relation to the exchange of digital data communications by the VDES, the Commission and EMSA are involved in a VDES project with the European Space Agency (ESA) and Norway through which the exchange of MRS/VTIS reporting from ship to shore will be demonstrated by using the satellite component (VDE-SAT) of the VDES.

DELETED

Consideration at MSC 102

Document MSC 102/21/4 (Japan, Norway and Singapore) follows up on the above-mentioned developments and, in order to introduce VDES and to ensure its appropriate use, proposes a new output to amend SOLAS Chapter V and other relevant IMO instruments as well as to develop appropriate MSC resolutions on the use of and performance standards for VDES. The co-sponsors propose that this work is carried out by the NCSR Sub-Committee, with a target completion year of 2022.

DELETED

- **Emergency towing (MSC 102/21/5(+Corr.1))**

EU relevance

The Union has competence on this matter.

Article 6(2)(a)(i) of Directive 2009/45/EC on safety rules and standards for passenger ships applies SOLAS, as amended, to Class A passenger ships. In addition, Regulation II-1/A-1/5 of Commission Delegated Regulation (EU) 2020/411 of 19 November 2019 amending Directive 2009/45/EC states that CLASS B ships shall be provided with a ship-specific emergency towing procedure. Such a procedure shall be carried aboard the ship for use in emergency situations and shall be based on existing arrangements and equipment available on board the ship. This regulation also refers to the ‘Guidelines for owners/operators on preparing emergency towing procedures’ (MSC.1/Circ.1255). Therefore, any changes to SOLAS requirements with respect to emergency towing arrangements and procedures applicable to passenger ships fall under EU competence.

Any future submissions on this possible agenda item should be Union submissions.

Consideration at MSC 102

In document MSC 102/21/5 (France, Monaco, New Zealand, Spain and Vanuatu) the cosponsors propose establishing a new output to extend the scope of SOLAS regulation II-1/3-4 in respect of requirements for emergency towing arrangements on tankers to all types ships of 20,000 gross tonnage and above, including passenger ships. The document refers to the various maritime casualties involving large ships where appropriate towing arrangements would have facilitated assistance to such ships in an effort to avoid marine pollution and navigational hazards to other ships. The difficulties and risks of towing a vessel that is not equipped with a device that complies with the requirements of Chapter II-1.3.4 is shown in this submission through the Modern Express accident, which occurred on west of the coast of France in January 2016. This incident prompted the French authorities to initiate a legislative process with a view to improving and facilitating towing operations.

The co-sponsors consider this subject as a priority and suggest that the outcome is included in the Strategic Plan of the Organization and the priorities for the biennium 2021-2022.

When this requirement was originally drafted, oil tankers were considered as very high-risk ships due to the major pollution caused by oil spills. Nowadays, the capacity of the bunker tanks of large container ships or very large cruise ships may exceed the commercial capacity of some oil tankers.

France also presents two INF documents related to this point. In INF 4: Information on the evolution of ship size in the English Channel, France shows an upward trend in the traffic of very large commercial vessels in the Channel, with the focus on large container ships, passenger ships and ro-ro ships. In INF 5, France reports on a towing exercise report of a large container ship, the CMA- CGM Marco Polo.

DELETED

- **International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code) (MSC 102/21/10 and MSC 102/21/17)**

EU relevance

The Union has competence on this matter.

Amendments to the International Code on the Enhanced programme of inspections during surveys of bulk carriers and oil tankers, 2011 (2011 ESP Code) will affect EU law through the application of Regulation (EU) No 530/2012 of the European Parliament and of the Council on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers.

Background

The latest amendments to the 2011 ESP Code were adopted by MSC 101 in resolution MSC.461(101) (June 2019). These amendments should be deemed to have been accepted on 1 July 2020 and enter into force on 1 January 2021. The EU position on these amendments was established by Council Decision 2019/851 of 27 May 2019.

Consideration at MSC 102

MSC 102/21/10 (Brazil, Marshall Islands, BIMCO and INTERCARGO) follows up on the report of the marine safety investigation into the loss of the MV Stellar Daisy. The co-sponsors note that the investigation determined that the MV Stellar Daisy foundered due to a structural failure in the No.2 port water ballast tank (WBT). Therefore, the co-sponsors are proposing amendments to address the safety issues that were identified in the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code). It is proposed that this issue is considered by SDC Sub-Committee under the existing output "Amendments to the ESP Code". IACS (MSC 102/21/17) comments on this document noting that further investigation into the corrosion rates, structural deterioration and defect/failure rates experienced in water ballast tanks and void spaces on all types of bulk carriers should be considered but does not see the necessity to increase survey requirements of water ballast tank and void spaces for all bulk carriers.

DELETED

- **International Code for Application of Fire Test Procedures, 2010 (FTP Code) (MSC 102/21/11)**

EU relevance

The Union has competence on this matter.

Article 6(2)(a)(i) of Directive 2009/45/EC establishes that passenger ships of Class A are to comply entirely with the requirements of the 1974 SOLAS Convention, as amended, as well as with the related Codes, include the FTP Code.

Consideration at MSC 102

The EU and the United Kingdom submitted MSC 102/21/11 proposing the establishment of a new output to discuss a revision of the 2010 FTP Code taking into consideration the experience gained in its application, the adopted unified interpretations, the revision of ISO fire test standards and new technologies. Therefore, such a revision will aim to update the 2010 FTP Code to ensure a more harmonised application. It is proposed that this new output should be assigned to the SSE Sub-Committee with three sessions to complete (i.e. by 2023).

- **Safe return to port (MSC 102/21/12)**

EU relevance

The Union has competence on this matter.

Article 6(2)(a)(i) of Directive 2009/45/EC establishes that passenger ships of Class A are to comply entirely with the requirements of the 1974 SOLAS Convention, as amended.

Background

The concept of 'safe return to port' (SRtP) was introduced in SOLAS in 2006 when MSC 82 adopted amendments to SOLAS chapters II-1 and II-2. These new regulations are applicable to passenger ships, as defined in SOLAS II-2/21.1, constructed on or after 1 July 2010. To provide additional guidance for the uniform implementation of such regulations, MSC developed the Interim Explanatory Notes for the assessment of passenger ship systems' capabilities after a fire or flooding casualty (MSC.1/Circ.1369), as amended by MSC.1/Circ.1369/Add.1, and which are referenced through a footnote in SOLAS regulations II-1/8-1, II-2/21.4 and II-2/22.3.

Consideration at MSC 102

The co-sponsors (Bahamas, Panama, CLIA and IACS) of document MSC 102/21/12 argue that several years after the adoption of the SRtP concept, it has become clear that there is a lack of uniform implementation. They consider it is time to review the guidance in order to provide for well-defined clarifications or interpretations. Therefore, they propose the establishment of a new output to initiate a review of MSC.1/Circ.1369, as amended. It is proposed that this work is carried out over two sessions by the SSE and SDC Sub-Committees, with the SDC Sub-Committee acting as the coordination body. In MSC 102/21/22, CLIA supports the proposal in MSC 102/21/12. In addition, CLIA proposes that the output should not be limited to the revision of MSC.1/Circ.1369 but should be open to be able to consider the need for amending SOLAS regulation II-2/21 to develop additional SRtP decision support systems and periodic drills as well as the STCW Convention to include seafarer competency/training for SRtP.

*The concept of SRtP was discussed several times in the past in order to clarify certain aspects of its implementation. EMSA included this topic in its inspections of Recognised Organisations (ROs). This experience could be very helpful when reviewing the Guidelines. **DELETED***

- **Containers lost at sea (MSC 102/21/13 and MSC 102/21/19)**

EU relevance

The Union has competence on this matter.

The reporting of incidents involving containers lost at sea is regulated in EU law by Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system. Article 17.2(d) of this Directive requires that Member States take all appropriate measures to ensure that the master of a ship sailing within their search and rescue region/exclusive economic zone or equivalent, immediately reports to the coastal station responsible for that geographical area any "...containers or packages seen drifting at sea." The purpose is to make responsible authorities aware, so that timely measures can be taken. The reporting of incidents involving the loss of containers was implemented by the Commission in cooperation with the Member States through the Union Maritime Information and Exchange System (SafeSeaNet) operated by EMSA, developing Incident Reporting Guidelines covering this aspect and including a uniform reporting format.

In addition, Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector, provides that Member States' maritime accident investigation bodies are informed without delay by the responsible authorities and/or by the parties involved, of the occurrence of all casualties and incidents falling within the scope of the Directive, including the loss of containers at sea. Furthermore, Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy requires Member States to report on the quality of the marine environment and to monitor activities or incidents that may affect it.

In view of the above, this issue falls under EU exclusive competence.

Background

*MEPC 73 adopted the Action Plan to address marine plastic litter from ships (resolution MEPC.310(73)). During the discussion on marine plastics, the MEPC noted that the loss of containers at sea could, besides being a source of marine plastics, be a safety hazard for ships and fishing vessels. Therefore, MEPC requested the MSC to consider the establishment of a mandatory system for reporting containers lost at sea, taking into account the discussions at MEPC and the corresponding action in the Action Plan. **DELETED***

Consideration at MSC 102

In line with what has been agreed at MEPC 73 and MSC 101, Vanuatu submitted document MSC 102/21/13 asking for the establishment of a new output to develop holistic global measures to facilitate the development of measures regarding the detection and mandatory reporting of containers lost at sea that may enhance the positioning, tracking and recovery of such containers. In the document, Vanuatu also highlights the various hazards posed by containers lost at sea as well as the international regulatory framework which deals with some aspects of this issue.

The EU, in support of this proposal, submitted document MSC 102/21/19. This document, co-sponsored by WSC and BIMCO, provides comments on document MSC 102/21/13 - such incidents represent a potential danger to maritime safety and a threat to the environment, particularly if they contain plastic or hazardous materials. Document MSC 102/21/19 expresses general support for a new output, and draws attention to the operational system at European Union level for the detection and reporting of containers lost at sea enhancing the positioning, tracking and recovery of such containers, which could serve as an inspiration for a system at the international level.

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Agenda item 22 – Any other business (only COVID-19 related items to be discussed)**

Docs: MSC 102/22, MSC 102/22/1-13, MSC 102/INF.9-10, MSC 102/INF.21, MSC 102/INF.25-26

MSC 102/22 (Secretariat): reports on the outcome of the second meeting of the International Quality Assessment Review Body (IQARB) in the trial phase, which was held at IMO Headquarters on 27 and 28 February 2020.

MSC 102/22/1 (Secretariat): reports on the International Association of Classification Societies' (IACS) Quality System Certification Scheme (QSCS) so far as it concerns the participation agreements between IMO and IACS.

MSC 102/22/2 (Secretariat): reports on the background and outcome of the Ministerial Conference on Fishing Vessel Safety and Illegal, Unreported and Unregulated (IUU) Fishing, which was held in Torremolinos, Spain, from 21 to 23 October 2019.

MSC 102/22/3 (WMO): provides additional guidance in the context of resolution A.1067(28) on Framework and Procedures for the IMO Member State Audit Scheme, within the area of competence of the World Meteorological Organization (WMO).

MSC 102/22/4 (Ukraine): draws the attention of the Committee to the Russian Federation's unlawful unilateral actions in the northern part of the Black Sea, the Sea of Azov and the Kerch Strait, including the maritime areas adjacent to the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation (hereinafter "Crimea"), and the consequences of such unlawful actions for the safety and security of navigation in these maritime areas.

MSC 102/22/5 (United States): identifies the urgent issue of deliberate interference with GPS and GNSS signals throughout the world.

MSC 102/22/6 (ISO): notifies the Committee of the recent publication of ISO/PAS 23678, in support of the effective implementation of resolution MSC.402(96), which entered into force on 1 January 2020.

MSC 102/22/7 (Russian Federation): comments on document MSC 102/22/4.

*MSC 102/22/8 (Cook Islands, Malaysia, Norway, Philippines, Switzerland, United Arab Emirates, United Kingdom, United States, ICS, INTERCARGO and WSC): proposes that the Committee recognize the industry-led Recommended Framework of Protocols related to safe ship crew changes and issue an MSC circular accordingly.

*MSC 102/22/9 (France): informs shipowners and cruise-ship operators of the limited public hospital capacity available to care for patients affected by a sizeable outbreak of COVID-19 aboard ships navigating in the waters of the French Antilles search and rescue area.

*MSC 102/22/10 (New Zealand): practical action is required to resolve the seafarers' crisis created by the COVID-19 pandemic. Safe shipping practices rely on seafarers being free of stressors that may impact their focus and this includes access to medical care and relief from fatigue. New Zealand proposes that the Organization, working with ILO and ICAO, develop a universal non-text logo that enables seafarers to identify, and consequently access, dedicated resources and processes on ship, in port and in transit to/from ships. Such a logo will have a longer-term benefit by guiding seafarers to services which will ultimately support better safety outcomes.

*MSC 102/22/11 (Republic of Korea): proposes to initiate discussion at the IMO level aiming towards global and uniform implementation of remote surveys, taking into consideration their increased use during the COVID-19 pandemic.

*MSC 102/22/12 (Cyprus, France, Georgia, Indonesia, Malaysia, Peru, the Philippines, Saudi Arabia, Spain, Vanuatu, ICS): proposes to create a GISIS module to register ports which facilitate crew changes and disseminate information about those ports to enable shipping companies to easily plan and organize crew changes during the COVID-19 pandemic.

*MSC 102/22/13 (Iceland, Indonesia, the Philippines, South Africa, Spain, FAO, ILO, WMU and Pew): provides comments on document MSC 102/22/2 on the outputs of the 2019 Torremolinos Ministerial Conference and is related to the capacity-building that is considered necessary to facilitate the entry into force of the 2012 Cape Town Agreement (the Agreement). The document provides, in this regard, some ideas concerning the content of guidance to assist competent authorities in the implementation of the Agreement. These ideas were originally submitted by the same co-sponsors to III 7, which was postponed because of the COVID-19 pandemic. Due to the urgency of this matter, these ideas are hereby re-submitted.

MSC102/INF.9 (Secretariat): contains the Factual Statements issued to 12 IACS members by IQARB, as referred to in document MSC 102/22/3.

MSC 102/INF.10 (Japan): reports on the results of the 2nd Coast Guard Global Summit held in Tokyo on the 20 and 21 November 2019, a platform of dialogue and cooperation under the changing situation at a global scale surrounding coast guards in the world.

MSC 102/INF.21 (ICS and OCIMF): informs of a recently published and publicly available ICS/OCIMF guidance document entitled "Guidelines for the Development of a Polar Water Operational Manual. The purpose of the guidance document is to help shipping companies and Masters develop a comprehensive Polar Water Operational Manual (PWOM), which must be carried on board ships in accordance with chapter 2 of part I-A of the International Code for Ships Operating in Polar Waters (Polar Code), tailored to the needs of their individual ships and voyages.

*MSC 102/INF.25 (ICS and IAMU): informs of the outcomes from a recent meeting between the International Chamber of Shipping (ICS) and the International Association of Maritime Universities (IAMU) on the "Impacts of the COVID-19 pandemic on maritime education and training".

*MSC 102/INF.26 (Austria et al.): contains information on safe practices for seafarer mobility and crew changes. It details labour standards as well as health and safety recommendations for COVID-19 prepared by international organisations. The measures applicable to fishers are also covered. In addition, the submission lists the efforts the European Union has undertaken to address the crew change crisis.

IQARB (MSC 102/22)

The Commission has actively participated in the two meetings of IQARB; the Council was informed of the results of the first through a working paper (WK 5284/2019 INIT), with a positive overall experience. **DELETED**

Torremolinos Diplomatic Conference and 2012 Cape Town Agreement

In MSC 102/22/2 the IMO Secretariat reports on the Torremolinos Diplomatic Conference held in October 2019 primarily to encourage IMO Member States to ratify and accede to the 2012 Cape Town Agreement on fishing vessel safety. One significant outcome was the Torremolinos Declaration signed by 48 states including 9 EU Member States (BE, DE, DK, FI, FR, IE, HR, NL and ES), in which they expressed their determination

“to take action so that the entry-into-force criteria of the Agreement are met by the target date of 11 October 2022, the 10th anniversary of its adoption”.

The Declaration remains open for signature for up to one year from the date of the Conference. The Commission would strongly urge those Member States who have not signed the Declaration to do so. By doing so they would give effect to paragraph 4.6 of the Opatija Ministerial Declaration of 11 March 2020 in which all declared:

4.6 **UNDERLINE**, in terms of safety and protection of human life and the environment, the importance of ratification of international maritime conventions, such as the Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977”

The Commission takes this opportunity to remind Member States that after 8 years to date only six EU Member States (BE, DE, DK, ES, FR and NL) have ratified the Agreement. Council Decision 2014/195/EU, provides that

"Member States shall endeavour to take the necessary steps to deposit their instruments of ratification of, or accession to, the Agreement with the Secretary-General of the International Maritime Organisation within a reasonable time and, if possible, no later than two years from the date of entry into force of this Decision."

8 years have passed since the original Agreement and over 6 years since this Council Decision – in the Commission's view such a delay in ratification by Member States has become unreasonable. Moreover, the absence of any international instrument on fishing vessel safety simply makes any updating of technical safety rules for fishing vessels impossible at a global, IMO level. The Commission services are now considering action at EU level, as the EU Directive, Directive 97/70/EC, is over 20 years old and applies the provisions of the Agreement's predecessor, the 1993 Torremolinos Protocol.

DELETED

Ukraine – Russian Federation

In document MSC 102/22/4, Ukraine once again raises the issue of Russia's illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol and the legitimacy of its maritime administration of this area. In its document it lists the numerous times it has complained about the Russian Federation's usurpation of its role as a maritime administration in the illegally annexed territory. Ukraine emphasises that the Russian Federation's claim to be responsible for implementing IMO instruments in the maritime areas appertaining to the Crimean Peninsula impermissibly infringe upon Ukraine's rights as the coastal State for those areas, and are unlawful and invalid as they violate those rights.

In response, the Russian Federation in MSC 102/22/7 reiterates that this issue should not be dealt within the IMO fora and emphasises that it is enforcing all its legal maritime obligations in the Sea of Azov and the Kerch Strait in accordance with the IMO instruments.

DELETED

• **DELETED**

- **DELETED** *Declaration by the High Representative on behalf of the EU on 16 March 2020*
<https://www.consilium.europa.eu/en/press/press-releases/2020/03/16/declaration-by-the-high-representative-josep-borrell-fontelles-on-behalf-of-the-european-union-on-the-autonomous-republic-of-crimea-and-the-city-of-sevastopol/>

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From ADD 1:

EU relevance

a. Crew changes⁸

The Union has competence in respect of working conditions for seafarers and border control.

The provisions of the 2006 Maritime Labour Convention, as amended, have been transposed into EU law through two successive joint social partners agreements at EU level: Directive 2009/13/EC, which aimed at improving working conditions for seafarers, particularly as regards employment agreements, working hours, repatriation, careers and skill development, accommodation and recreation facilities, food and catering, health and safety protection, medical care and complaint procedures; and amending Directive (EU) 2018/131 dealing with the financial security of seafarers in the case of abandonment. In particular, the following is relevant:

- *for the seafarers' repatriation: Regulation 2.1 of annex to Directive 2009/13, which includes the rule on maximum duration of service periods on board, following which the seafarer is entitled to repatriation (see Standard A.2.5 (2) (b) of the same annex);*
- *for the obligation imposed on Member States to ensure the medical care on board ship and ashore: Regulation 4.1 of the annex to Directive 2009/13.*

Articles 11(3)(c) and 20(1)(c), as well as Point 3 of Annex VII (Special rules for certain categories of persons) of the Schengen Borders Code (Regulation (EU) 2016/399 establishing a Community Code on the rules governing the movement of persons across borders) establish particular provisions for seafarers, when entering or leaving the territory of a Member State. In addition, there are the specific provisions set out in the Annex to the Commission Implementing Decision establishing the operational instructions for issuing visas at the external border to seafarers as set out in C(2020) 64 final of 15 January 2020.

The Commission recognises that the COVID-19 pandemic has caused severe disruption to the maritime sector and particularly seafarer conditions and crew changeover. For that reason, it has issued several relevant guidelines, most notably,

- *Guidelines on protection of health, repatriation and travel arrangements for seafarers, passengers and other persons on board ships (C(2020) 3100 final of 8 April 2020);*
- *Guidelines for border management measures to protect health and ensure the availability of goods and essential services (C(2020) 1753 final of 16 March 2020); and*
- *Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak (2020/C 102 I/03 of 30 March 2020).*

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Additional informational on measures adopted by the European Union to address the challenges faced by crews due to the COVID-19 pandemic are contained in MSC 102/INF.26 (Austria et al). In addition, EMSA and the ECDC co-authored a technical document entitled “COVID-19: EU Guidance for Cruise Ship Operations”. This document was circulated by the IMO in Circular Letter No.4204/Add.26 (3 August 2020).

b. Remote surveys

The Union has competence on this issue.

Ship inspections and surveys that are mandatory under the international conventions are regulated in the EU through Directive 2009/15/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations, while Recognised Organisation (RO) acting on behalf of EU flag states are regulated by Regulation (EC) No 391/2009 on common rules and standards for ship inspection and survey organisations.

Background

The thirty-second extraordinary session of the IMO Council (C/ES 32) which was held between 4 May and 3 August 2020, after considering relevant documents about the disruption in maritime traffic resulting from the COVID-19 pandemic, encouraged interested Member States and organisations to present proposals, also taking into consideration the circular letters issued during the pandemic, to the MSC for further consideration.

Following from the conclusions of C/ES 32 and in accordance with the revised agenda for MSC 102, contained in document MSC 102/1/Rev.1 (Secretariat), in addition to the documents already processed for consideration by MSC 102, documents related to the COVID-19 pandemic were accepted under this agenda item to be considered at this session.

Consideration at MSC 102

a. Crew changes

*The co-sponsors of document MSC 102/22/8 (Cook Islands et al) propose that the MSC issues an MSC circular to enhance the awareness of the use of the industry-led Recommended Framework of Protocols related to safe ship crew changes. As highlighted in MSC 102/INF.26, the EU took several initiatives in response to the challenges faced by crew, including through the use of the Recommended Framework of Protocols. Therefore, the Commission is of the view that the adoption of the MSC circular at this session should be supported in an effort to safeguard the health and safety of seafarers without prejudicing the levels of maritime safety and security. The EU INF paper also highlighted additional actions that could be taken into account within the framework of this circular, notably a wider context of responsibility between seafarer and ship operators and to some extent different levels of government to ensure best possible protection. MSC 102/22/12 by Cyprus et al put forward a helpful proposal to utilise the IMO GISIS system to identify ports that facilitate crew changes during the pandemic. **DELETED***

b. Remote surveys

In document MSC 102/22/11, the Republic of Korea makes reference to the enhanced use of remote surveys particularly in current times were very often surveyors avoid visiting ships in person. The Republic of Korea there proposes that the Committee initiates how best to develop harmonised international guidance on the conduct of remote surveys.

The Commission wishes to inform the Member States that EMSA carried out a Recognised Organisations (RO) horizontal monitoring exercise focusing on remote survey activities in the wake of the COVID-19 pandemic. The findings of this study have led EMSA and the Commission to decide that from now until mid-2021, the RO inspection programme will consist of remote RO inspections, focussing specifically on the safety concerns arising in relation to remote surveying. The Commission and EMSA have also studied the use of remote surveys, inspections and verifications in the area of maritime security, and have raised the topic for discussion in the Maritime Security Committee (established by Regulation (EC) No 725/2004 on enhancing ship and port facility security). In this respect, the Commission and EMSA are also considering contributing to this discussion at IMO in an effort to cover the proper conduct of this activity.

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The Sub-Committee decided that, while the use of RITs for surveys under the 2011 ESP Code was generally supported, the matter required a broad approach. Therefore, interested parties were invited to submit relevant proposals to future sessions of the Sub-Committee for further consideration.

DELETED

c) Cape Town Agreement of 2012

The 4th Joint IMO/ILO/FAO WG meeting in October 2019 recommended that IMO consider developing guidance to assist competent authorities in the implementation of the Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, through the most appropriate process. In this regard Iceland et al proposed in document III 7/14/1 a possible structure for such guidance and reiterate this in MSC 102/22/13.

In this regard it should be recalled that Council Decision of 17 February 2014 has authorised Member States to sign, ratify or accede to the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.

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