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#### WORKING DOCUMENT

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From: General Secretariat of the Council

To: Delegations

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Subject: Non paper drafted to facilitate co-ordination between the EU Member States and the Commission for the 109<sup>th</sup> session of the IMO Legal Committee (LEG 109) (21 - 25 March 2022)

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#### **DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (04.04.2022)**

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 EU coordination meeting on 17 March 2022.**

NON-PAPER

ON THE POSITION OF THE UNION FOR  
THE 109<sup>TH</sup> SESSION OF THE LEGAL COMMITTEE (LEG 109)  
(21 - 25 MARCH 2022)<sup>1</sup>

The annotated agenda is presented to the Council with the view to establishing the EU positions on agenda items for the 109<sup>th</sup> session of the Legal Committee (LEG 109).

This document lists all received documents under the agenda items of EU relevance<sup>2</sup>.

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.<sup>3 4 5 6</sup>

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<sup>1</sup> It is the intention of the Presidency to ensure the necessary co-ordination of the Member States' positions on the spot on the basis of the discussion of this paper.

<sup>2</sup> Based on documents received up to 28 February 2022.

<sup>3</sup> 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. **DELETED**

<sup>4</sup> Reservation: all delegations (pending the outcome of discussions on IMO – EU co-ordination procedural matters within the framework of the SWP in Brussels).

<sup>5</sup> 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.

<sup>6</sup> 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:** LEG 109/1

LEG 109/1 (Secretariat): provides the provisional agenda of the 109<sup>th</sup> session of the Legal Committee.

## **Agenda item 3 – Facilitation of the entry into force and harmonized interpretation of the 2010 HNS Protocol**

**Docs:** LEG 109/3

LEG 109/3 (Canada): provides information on a forthcoming virtual workshop on the 2010 HNS Convention.

### EU relevance

*This matter falls under EU exclusive competence.*

*The Council authorised EU Member States to ratify the 1996 HNS Convention, by means of Council Decision 2002/971/EC. The 2010 Protocol amended the 1996 Convention and its consolidated text hereinafter is referred to as the '2010 HNS Convention'. To cover this, a new Council Decision was needed authorising Member States to ratify the 2010 Protocol and, thus, to become parties to the 2010 HNS Convention, in the interest of the European Union. Council Decision (EU) 2017/769 and Council Decision (EU) 2017/770 of 25 April 2017 on the ratification and accession by Member States, in the interest of the European Union, to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, with the exception of and with regard to the aspects related to judicial cooperation in civil matters, respectively, were adopted.*

**DELETED**

## Background

*The 2010 HNS Protocol will enter into force 18 months after the date on which two conditions are fulfilled: a) it is ratified by at least twelve States, including four States each with not less than 2 million units of gross tonnage; b) the Secretary-General has received information in accordance with article 20, paragraphs 4 and 6 of the Protocol, that those persons in such States who would be liable to contribute, pursuant to article 18, paragraphs 1(a) and (c) of the Convention, as amended by the Protocol, have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account. To date five states have ratified the Convention – Norway, Canada, Turkey, Denmark and South Africa – each of which has more than 2 million units of gross tonnage. The 2010 HNS Protocol needs seven more States to ratify or accede to it, to enter into force. **DELETED***

## Consideration at LEG 109

*In LEG 109/3, Canada announces the organisation of a virtual workshop on the 2010 HNS Convention during September 2022. The main purpose of this workshop is to raise awareness as to the need and benefits of ratifying the 2010 HNS Convention. In fact, during this workshop participants will be given: a) the opportunity to discuss the importance of the Convention; b) an overview of HNS incidents; and c) the experience of Member States who have already ratified the Convention and established the required reporting systems. **DELETED***

## **Agenda item 4 – Fair treatment of seafarers**

**Docs:** LEG 109/4(a), LEG 109/4(a)/1-2, LEG 109/4(b), LEG 109/4(d), LEG 109/4(d)/1

LEG 109/4(a) (ILO and IMO Secretariats): provides a report on the IMO/ILO joint database of abandonment of seafarers for the period 1 January to 31 December 2021.

LEG 109/4(a)/1 ((ITF)): focuses on reporting of incidents of abandonment for the period 1 January to 31 December 2021.

LEG 109/4(a)/2 (ITF): focuses on reporting of incidents of abandonment for the period 1 January to 31 December 2021.

LEG 109/4(b) (ITF): Resolution LEG.3(91) on Guidelines on fair treatment of seafarers in the event of a maritime accident was adopted on 27 April 2006, over 15 years ago. Despite this, there continue to be issues of concern regarding the treatment of seafarers involved in a maritime accident.

LEG 109/4(d) (Indonesia as coordinator of the Correspondence Group): contains the report on the work of the intersessional Correspondence Group on Development of Guidelines for Port State and Flag State Authorities on How to Deal with Seafarer Abandonment Cases. The Group developed practical guidelines to address abandonment of seafarer cases for port States, flag States, and States of which seafarers are a national.

LEG 109/4(d)/1 (India): provides information on the difficulties faced by seafarers and Member States in the event of seafarer abandonment and proposes to include distinct information about abandoned seafarers in the IMO/ILO joint database of abandonment of seafarers and to develop a mechanism to facilitate the expeditious exchange of information and response from the authorities of the flag State, the nearest port State and the Member State of which the abandoned seafarer is a national.

(a) Provision of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of, seafarers in light of the progress of amendments to the ILO Maritime Labour Convention, 2006

#### EU relevance

*This matter falls under EU exclusive competence.*

*The 2014 amendments to the Maritime Labour Convention, 2006 (MLC 2006), require that a financial security system be put in place to ensure that shipowners provide assistance to seafarers in two new situations of abandonment: when the shipowner has left a seafarer without the necessary maintenance and support or when he has unilaterally breached the ties binding them (including failure to pay contractual wages for at least two months). These amendments provide additional protection for seafarers to the already included requirements for compensation in cases of death or long-term disability due to an occupational injury, illness or hazard. Mandatory certificates or other documentary evidence will be required to be carried on board ships to ensure that the financial security system is in place to protect the seafarers working on board.*

*The 2014 amendments were implemented in EU legislation by Council Directive (EU) 2018/131 of 23 January 2018 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014.*

#### Background

*LEG 107, after considering the measures proposed by Ukraine (LEG 107/4/4), the Committee agreed to:*

- a. add, in the IMO/ILO database, information concerning the financial security provider within the standard form to be used when reporting information on cases of abandonment;*
- b. encourage the IMO and ILO Secretariats to conduct additional analysis on the effectiveness of Regulation 4.2 of MLC, 2006;*
- c. invite Member States and non-governmental organizations to conduct additional training and information campaigns aimed at raising seafarers' awareness of financial security in case of seafarers' abandonment, personal injury or death; and*

- d. *the proposals regarding Port State Control (PSC) (i.e. the Secretariats of the Memoranda of Understanding on PSC should provide information on insurance certificates, their validity period and contact information of financial security providers, into the PSC Ship Inspection Report; and b) that they should conduct a Concentrated Inspection Campaign (CIC) on financial security regarding 2014 MLC amendments) should be referred to the III Sub-Committee for its views.*

*The Committee did not support including elements of the MLC 2006 in IMSAS because the implementation of the MLC 2006 fell under the responsibility of the ILO and not the IMO.*

**DELETED**

#### Consideration at LEG 109

*In LEG 109/4(a), the ILO and IMO Secretariats provide a list of abandonment incidents recorded on the IMO/ILO joint database, while in LEG 109/4(a)/1-2, the ITF provides a valuable analysis of abandonment cases. **DELETED***

#### (b) Fair treatment of seafarers in the event of a maritime accident

*In LEG 109/4(b), the ITF draws the attention of the Committee to a number of cases where seafarers involved in maritime accidents were detained for long periods of time, awaiting the conclusion of investigations. These incidents are still happening despite the fact that the Guidelines on fair treatment of seafarers in the event of a maritime accident (Resolution LEG.3(91)) provides that any investigation to determine the cause of a maritime accident should be conducted in a fair and expeditious manner.*

#### (c) Fair treatment of seafarers detained on suspicion of committing maritime crimes

##### EU relevance

*This matter falls under EU exclusive competence.*

*There are six applicable EU directives (excluding Denmark) which harmonise the procedural rights of suspects in criminal proceedings:*

- *Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1): The directive covers the rights to interpretation and to translation of "essential documents" in criminal proceedings and proceedings for the execution of a European arrest warrant. Costs are to be met by the Member State, regardless of outcome.*
- *Directive 2012/13/EU on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1): The directive covers the right to information of suspects and accused persons regarding their rights in criminal proceedings and the accusation against them, and the right to information of persons subject to a European arrest warrant regarding their rights. This includes the provision of a "letter of rights" on arrest or when subject to European arrest warrant proceedings and the right of access to materials of the case.*

- *Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1): The directive covers the right of access to a lawyer in criminal proceedings and for those subject to a European arrest warrant; the right to have a third party informed of deprivation of liberty; and the right to communicate with third persons and with consular authorities while deprived of liberty.*
- *Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1): The directive covers the presumption of innocence for natural persons only; restrictions on public references to, or indications of, guilt of suspects or accused persons; the right to remain silent and the privilege against self-incrimination; and the right to be present at trial.*
- *Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1): The directive applies to children, who are defined as those under the age of 18. It covers the rights to information of the child and the party with parental responsibility for her/him; a significant number of other rights (e.g. to legal assistance, medical examination, audio-visual recording of questioning, limitations on deprivation of liberty, protection of privacy); and the right to be accompanied by the party with parental responsibility.*
- *Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1): The directive establishes minimum rules regarding the right to legal aid for suspects and accused persons in criminal proceedings, and for persons subject to a European arrest warrant. Member States must ensure that the particular needs of vulnerable persons are taken into account in its implementation. The Directive states explicitly that Member States may apply a means test, a merits test, or both in decisions regarding the granting of legal aid.*

*These directives articulate certain aspects of the right to a fair trial etc. laid down in the ECHR and the EU Charter of Fundamental Rights (Articles 47 and 48).*

### Background

*LEG 106 considered LEG 106/15 (Georgia et al.) suggesting the establishing of a joint IMO/ILO/ITF Working Group to develop guidelines and recommendations on prevention of seafarers' involvement in maritime crimes and to ensure seafarers' right to fair treatment in case of their detention on suspicion of committing maritime crimes. In its commenting paper, LEG 106/15/1, ILO detailed the work that had already been undertaken in this field and pointed out relevant elements within the Maritime Labour Convention and guidelines produced for seafarers detained in a foreign port. **DELETED***

**DELETED**

*Finally, the Committee concluded that while there was support for developing guidelines and to establish a joint IMO/ILO/ITF working group, a new output was required.*

*As a follow-up to the discussion at LEG 106, the Committee supported the established of a new output proposed by Georgia et al. (LEG 107/14) on measures to promote the fair treatment of seafarers detained on suspicion of committing maritime crimes, which should be completed by 2023. However, this issue could not be discussed any further because no documents were submitted to LEG 108. The IMO Secretariat and ILO only provided an oral update on the formation of the Joint ILO-IMO tripartite working group.*

#### Cosnideration at LEG 109

*No documents were submitted under this sub-agenda item.*

#### (d) Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases

##### EU relevance

*This matter falls under EU exclusive competence. Note relevant legislation under sub-item (a) above.*

##### Background

*LEG 107 agreed to include a new output on the development of guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases, with a target completion year of 2022. **DELETED***

*LEG 108 considered LEG 108/4(d) (China, Indonesia and Philippines), providing draft guidelines for port State authorities on how to deal with seafarer abandonment cases. The proposed guidelines provide the principles and procedures to effectively resolve seafarer abandonment cases. In addition, the co-sponsors proposed that Member States should establish an emergency mutual fund for abandoned seafarers to address the situation when shipowners, insurance companies and the flag State authority fail to or could not fully provide rapid and effective financial assistance, and the maritime authority of the port State alone cannot solve the case of the seafarer abandonment in a short period of time. Following a discussion, the Committee agreed to establish a correspondence group, under the coordination of Indonesia, to start the development of the guidelines. It was also agreed that the consideration of the establishment of a Fund would need to be justified through the consideration of a new output **DELETED.***

**DELETED**

Consideration at LEG 109

*The report of the correspondence group is contained in LEG 109/4(d) (Indonesia). The Group reports that it has managed to reach consensus on the text of draft guidelines and requests the Committee to endorse them* **DELETED**

**Agenda item 5 – Advice and guidance in connection with the implementation of IMO instruments**

**Docs:** LEG 109/5 [TO NOTE THAT THE TEXT BELOW WILL BE SUBJECT TO CHANGE IN THE LIGHT OF CURRENT DEVELOPMENTS]

LEG 109/5 (Ukraine): again draws the attention of the Committee to the unauthorized and unlawful issuance of certificates of the right to sail under the flag of the Russian Federation by the Russian authorities in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation (hereinafter "Crimea").

**DELETED**

**DELETED**

**DELETED**

**Agenda item 6 – Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships**

**Docs:** LEG 109/6, LEG 109/6/1, LEG 109/6/1/Add.1

LEG 109/6 (United States of America): provides the report of the Correspondence Group on Fraudulent Registration and Fraudulent Registries of Ships.

LEG 109/6/1 (Secretariat): comments on the report of the Correspondence Group on Fraudulent Registration and Fraudulent Registries of Ships contained in document LEG 109/6 and provides an update on various matters related to the fraudulent registration and fraudulent registries of ships since LEG 108.

LEG 109/6/1/Add.1 (Secretariat): informs the Committee of a communication received from the Government of Vanuatu on the operation of an illegal international registry.

EU relevance

*There is EU interest in promoting measures to deter and prevent fraudulent use of flag State registers especially in respect of ships visiting EU ports. The outcome of the discussions may have an impact on Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 which covers certain requirements applicable to EU Member States in their capacity as flag States, although only indirectly for the issue of fraudulent registration of ships. It may also be relevant to Regulation (EC) 789/2004 on the transfer of cargo and passenger ships between registers within the Community.*

Background

*LEG 105 agreed on a new output regarding measures to prevent unlawful practices associated with the fraudulent registration of ships in the 2018-2019 biennial agenda. This was one of the issues most debated at LEG 106, which agreed on the following measures:*

- a. requested the Secretariat to develop a new function on Registries of ships within the Contact Points module in GISIS;*

- b. *approved the draft Assembly resolution on Measures to prevent the fraudulent registration and fraudulent registries of ships (which was eventually adopted by Assembly 31);*
- c. *approved a circular on Recommended best practices to assist in combating fraudulent registration and fraudulent registries and to inform the Maritime Safety Committee accordingly; and*
- d. *requested the Secretariat to work with the United Nations Security Council to establish an easily searchable database, by IMO number and vessel name, of vessels currently the subject of, or designated pursuant to, United Nations Security Council resolutions.*

*LEG 106 also established an intersessional correspondence group, under the coordination of the United States, to continue the work on the identification of measures to prevent the fraudulent registration and fraudulent registries of ships. In view of the lack of progress on this issue LEG 107 re-established this correspondence group to continue to discuss the definitions as well as the proposal by UAE (LEG 107/7) to develop a draft Assembly resolution encouraging Member States and industry to develop measures to prevent and suppress fraudulent acts in the maritime sector, including the exchange of information, the development of appropriate penalties, the ratification of conventions, as well as the establishment of awareness campaigns and training.*

*LEG 108, after considering the report of the correspondence group (LEG 108/6), approved the definitions for “fraudulent registration” and “fraudulent registry” as well as a draft Assembly resolution on promoting actions for the prevention and suppression of fraudulent registration and fraudulent registries and other fraudulent acts in the maritime sector, which was eventually adopted by Assembly 32 (resolution A.1162(32)).*

*LEG 108 also requested the Secretariat to coordinate a study to address questions related to what were the practices and types of fraudulent registration and fraudulent registries of ships, what were the reasons and features of such occurrences, where were they occurring and under which flags, who were the victims, which were the legal instruments affected, whether this issue was considered as a crime or an offence, whether it was a national, regional or international problem, who could prevent such fraud, etc. A Correspondence Group, under the coordination of the United States, was established to draft the terms of reference for this study. The Correspondence group was also requested to consider the definition of ‘false documents’ proposed by China (LEG 108/6/1) as well as the issue raised by Congo (LEG 108/6/5) proposing that ships involved in fraudulent registration should be confiscated.*

#### Consideration at LEG 109

*The Correspondence Group report (LEG 109/6) includes the proposed terms of reference for the establishment of a study group on issues arising in connection with fraudulent registration and fraudulent registries of ships and possible measures to prevent them. It also completed the drafting of a definition of "false documents". As regards the proposal by Congo (LEG 108/6/5), it was agreed that Congo should review the submission taking into consideration the concerns raised during the deliberations of the Correspondence Group.*

**DELETED**

## **Agenda item 7 – Measures to assess the need to amend liability limits**

**Docs:** LEG 109/7, LEG 109/7/1-2

LEG 109/7 (Australia and Republic of Korea): reports on informal intersessional work undertaken by interested parties, including in relation to concerns raised at the 108th session of the Legal Committee, regarding the development of measures to assess the need to amend liability limits.

LEG 109/7/1 (Australia, Mexico, New Zealand and United Arab Emirates): provides information on measures to assess the need to amend liability limits. It also suggests the establishment of a formal intersessional correspondence group and instructing the Secretariat to take the work forward.

LEG 109/7/2 ((P & I Clubs): reports on the P & I Clubs' consideration of incident data in relation to future proposed methodologies on the development of measures to assess the need to amend liability limits, and specifically on the need for a policy decision to be taken on the Conventions to be covered by this work.

### EU relevance

*This matter falls under EU exclusive competence.*

*Directive 2009/20/EC of 23 April 2009 on the insurance of shipowners for maritime claims requires that ships flying the flag of an EU Member State as well as ships of other flags calling in ports under the jurisdiction of EU Member States shall be covered by an insurance. Article 3 defines 'insurance' as 'insurance with or without deductibles, and comprises, for example, indemnity insurance of the type currently provided by members of the International Group of P&I Clubs, and other effective forms of insurance (including proved self insurance) and financial security offering similar conditions of cover'. In accordance with Article 4, the insurance shall cover maritime claims subject to limitation under the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC), as amended by the 1996 Protocol. It should be noted that the amendments to update the limits of liability entered into force in June 2015, i.e. almost seven years ago.*

*Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents lays down the Union regime relating to the application of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 2002 (the Athens Convention). In December 2011, the EU ratified the Athens Convention 2002 (Council Decision of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof).*

*In addition, the following Council Decisions should be recalled:*

- *Council Decision 2002/762/EC of 19 September 2002 authorising the Member States, in the interest of the Community, to sign, ratify or accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention)*
- *Council Decision 2004/246/EC authorising the Member States to sign, ratify or accede to, in the interest of the European Community, the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (IOPC-F), and authorising Austria and Luxembourg, in the interest of the European Community, to accede to the underlying instruments;*
- *Council Decision 2017/769 of 25 April 2017 on the ratification and accession by Member States, in the interest of the European Union, to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), with the exception of the aspects related to judicial cooperation in civil matters; and*
- *Council Decision 2017/770 of 25 April 2017 on the ratification and accession by Member States, in the interest of the European Union, to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), with regard to the aspects related to judicial cooperation in civil matters.*

### Background

*At LEG 107, Australia (LEG 107/6/1) maintained that it was necessary to analyse the uniform implementation of IMO's liability and compensation regime as well as to consider its long-term sustainability. For this purpose, Australia submitted LEG 108/13 at LEG 108 proposing a new output to establish a system for the collection of the necessary data in order to allow the Committee to assess if there was a need to amend the limits of liability established in the different conventions. The Committee approved the establishment of this new output but requested Australia to take into consideration the concerns raised (as regards how information will be collated, how to deal with currency fluctuations, whether there will be a need for regular reviews, and on the use of the tacit acceptance procedure to approve changes to the limits of liability) when submitting additional documents to the next session of the Committee. **DELETED***

**DELETED**

### Consideration at LEG 109

*In LEG 109/7, Australia and Republic of Korea provide an update of the work carried out by an informal intersessional group since LEG 108. The document also attempts to address the concerns raised during LEG 108, as well as other issues which would have to be assessed in determining whether there is a need to amend the liability limits. **DELETED** It is for this reason that in LEG*

*109/7/1, Australia et al. propose the establishment of a formal intersessional correspondence group to provide a better setting to continue the work started by the informal group.*

*In LEG 109/7/2, the P & I Clubs provide their feedback on what incident data they could provide to assist the Committee in developing this work. They also emphasise that before collating such data the Committee should agree which Conventions would be covered by this work.*

**DELETED**

### **Agenda item 8 – Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001**

**Docs:** LEG 109/8

LEG 109/8 (Canada, Republic of Korea, United Arab Emirates, International Chamber of Shipping, International Group of Protection and Indemnity Associations and ITOPF Limited): to note and comment on the progress made on the development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, in line with the direction given by the Committee at its 108th session in July 2021. The Committee is also invited to note and comment on the draft claims manual text annexed to this submission.

#### EU relevance

*This issue falls under EU competence.*

*Council Decision 2002/762/EC of 19 September 2002 authorises the Member States, in the interest of the Community, to sign, ratify or accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention).*

#### Background

*At LEG 107, the P&I Clubs submitted LEG 107/17 highlighting that, unlike in the case of other liability related conventions, there is no claims manual in respect of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. Therefore, the P&I Clubs proposed that a Bunkers Convention Claims Manual should be developed by the IMO to provide the necessary guidance in the event of such pollution damage. **DELETED**:*

**DELETED**

*The Committee also supported this proposal but agreed that a new output was required.*

**DELETED**

### Consideration at LEG 109

*The progress achieved by the informal group in developing the Claims Manual is contained in LEG 109/8 (Canada et al). The co-sponsors are aware that the draft Claims Manual is still work in progress and that further work is required. They plan to complete an updated draft by next session of the Committee. At this stage the co-sponsors are only asking the Committee to take note of the work carried out so far and to provide comments on the drafted text.* **DELETED**

### **Agenda item 13 – Work programme**

**Docs:** LEG 109/13, LEG 109/13/1-5

LEG 109/13 (Canada, Denmark, Italy, Japan, United Arab Emirates): invites the Committee to agree a new output under the work programme on the development of guidance for the proper implementation and application of IMO liability and compensation conventions.

LEG 109/13/1 (Japan, Russian Federation and United Arab Emirates): proposes a new output to take further steps for the introduction of Maritime Autonomous Surface Ships (MASS) operations in IMO instruments.

LEG 109/13/2 (Canada and the Republic of Korea): proposes a new output to develop a consistent legal framework for the regulation of Maritime Autonomous Surface Ships (MASS) across IMO instruments emanating from the Legal Committee.

LEG 109/13/3 (Chairs of the Maritime Safety, Legal and Facilitation Committees): propose the establishment of and the terms of reference for a joint MSC-LEG-FAL Working Group on MASS to consider common gaps and themes identified during the regulatory scoping exercises conducted by the three committees.

LEG 109/13/4 (Secretariat): provides the Committee's outputs for the current biennium (2022-2023) to enable the Committee to report on the status of its outputs for the biennium.

LEG 109/13/5 (United Arab Emirates): provides comments on document LEG 109/13/3 and proposes to include the development of a comprehensive road map as part of the draft terms of reference for the joint MSC-LEG-FAL Working Group on MASS.

### *1. Liability Conventions*

#### EU relevance

*This matter falls under EU exclusive competence.*

*Directive 2009/20/EC of 23 April 2009 on the insurance of shipowners for maritime claims requires that ships flying the flag of an EU Member State as well as ships of other flags calling in ports under the jurisdiction of EU Member States shall be covered by an insurance. Article 3 defines 'insurance' as 'insurance with or without deductibles, and comprises, for example, indemnity insurance of the type currently provided by members of the International Group of P&I Clubs, and other effective forms of insurance (including proved self insurance) and financial security offering similar conditions of cover'. In accordance with Article 4, the insurance shall cover maritime claims subject to limitation under the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC), as amended by the 1996 Protocol. It should be noted that the amendments to update the the limits of liability entered into force in June 2015.*

*Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents lays down the Union regime relating to the application of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 2002 (the Athens Convention). In December 2011, the EU ratified the Athens Convention 2002 (Council Decision of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof).*

*In addition, the following Council Decisions should be recalled:*

- *Council Decision 2002/762/EC of 19 September 2002 authorising the Member States, in the interest of the Community, to sign, ratify or accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention)*
- *Council Decision 2004/246/EC authorising the Member States to sign, ratify or accede to, in the interest of the European Community, the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (IOPC-F), and authorising Austria and Luxembourg, in the interest of the European Community, to accede to the underlying instruments;*

- *Council Decision 2017/769 of 25 April 2017 on the ratification and accession by Member States, in the interest of the European Union, to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), with the exception of the aspects related to judicial cooperation in civil matters; and*
- *Council Decision 2017/770 of 25 April 2017 on the ratification and accession by Member States, in the interest of the European Union, to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), with regard to the aspects related to judicial cooperation in civil matters.*

### Background

*At LEG 107, the co-sponsors of document LEG 107/6 (Canada, Denmark, Italy, Japan, Norway and Republic of Korea) brought to the attention of the Committee the concerns raised at the International Oil Pollution Compensation Funds (IOPC Funds) meetings in respect of insurers not members of the P&I Clubs. The IOPC Funds in some cases suffered financial losses when they were unable to recover amounts due from such insurance companies. The co-sponsors proposed that, following the completion of the analysis of the Audit Body of the International Oil Pollution Compensation Funds, a number of actions could be taken by the Legal Committee, including the revision of the Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P & I Clubs), adopted at the 101st session of the Legal Committee (Circular Letter No.3464). **DELETED***

*LEG 108, discussed LEG 108/5 in which the IOPC Funds requested the Committee to advice on how the Funds should deal with claims related to the use of non-IG insurers. **DELETED***

*The Committee decided that a new output should be established to discuss this issue in more detail. Canada offered to work with interested parties to prepare a submission for LEG 109.*

### Consideration at LEG 109

*Canada, together with other co-sponsors, followed up on its previous documents by submitting LEG 109/13, highlighting the need to establish a new output to develop guidance for the proper implementation and application of IMO liability and compensation conventions to address the various liability insurance problems, related primarily to inadequate insurance, lack of insurance, and uncooperative insurers. The guidance is intended to assist flag States, port State control officers, shipowners, and insurers in their work in the application of IMO liability and compensation conventions.*

**DELETED**

### EU relevance

*This matter is of EU interest because the proposed new output may deal with issues within EU legislation related to liability conventions (note EU legislation identified above under other Agenda items).*

### Background

*The Legal Committee, at its 108th session (LEG 108), completed the "Regulatory Scoping Exercise (RSE) for the use of Maritime Autonomous Surface Ships (MASS)" and its outcome is contained in LEG.1/Circ.11.*

*The MSC and FAL Committees have also completed their RSE on MASS in respect of Conventions falling under their purview. All Committees agreed that a new output would be required to develop the next steps in particular to develop the necessary legal instruments to cater for the operation of MASS.*

### Consideration at LEG 109

*Two documents have been submitted proposing the establishment of a new output in respect of MASS: LEG 109/13/1 (Japan et al) and LEG 109/13/2 (Canada et al). The two documents take a slightly different approach: while Japan et al (LEG 109/13/1) concentrates on the development of amendments to IMO instruments under the purview of the Legal Committee, Canada et al (LEG 109/13/2) emphasises that besides the development of amendments to LEG related conventions, the new output should also develop a consistent legal framework for the regulation of MASS across IMO instruments including the development of common definitions and terminology related to MASS.*

*The RSE carried out by the different Committees had highlighted a number of common gaps across all conventions – for example, definitions and terminology to be used in relation to MASS and the role of the master. For this purpose, the Chairs of the Maritime Safety, Legal and Facilitation Committees (LEG 109/13/3) are proposing the establishment of a joint MSC-LEG-FAL Working Group on MASS to consider the common gaps and themes identified during the RSE process, if the Committees approve a new output on MASS. The need for such coordination is also mentioned in the other documents submitted under this agenda item (LEG 109/13/1 (Japan et al) and LEG 109/13/2 (Canada et al)). In addition, in LEG 109/13/5, the United Arab Emirates proposes that the terms of reference of the joint MSC-LEG-FAL Working Group on MASS should include the development of a comprehensive road map to integrate the road maps developed by the three committees.*

**DELETED**

