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COMMISSION STAFF WORKING DOCUMENT

For the Council Shipping Working party

IMO – Union submission to be submitted to the 101st session of the Maritime Safety Committee (MSC 101) of the IMO in London from 5-14 June 2019 commenting on documents MEPC 73/19 and MEPC 74/8

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IMO – Union submission to be submitted to the 101st session of the Maritime Safety Committee (MSC 101) of the IMO from 5-14 June 2019 in London, commenting on documents MEPC 73/19 and MEPC 74/8

PURPOSE

The document in Annex contains a draft Union submission to the 101st session of the Maritime Safety Committee of the IMO concerning the proposal for establishment of a new obligation to report the loss of containers through a standardised procedure.

The proposed reporting of lost containers, as set out in the Annex to the submission, should help to identify the exact location of the wreck and facilitate recovery operations undertaken by the Coastal State. The new reporting obligation would be added to articles 31 and 32 of Chapter V to the SOLAS Convention (danger message and information required).

It is hereby submitted to the appropriate technical body of the Council with a view to achieving agreement on transmission of the document to the IMO prior to the deadline of 16 April 2019¹.

The reporting of incidents involving lost containers is regulated in EU law in Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system². 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:

(a) any incident or accident affecting the safety of the ship, such as collision, running aground, damage, malfunction or breakdown, flooding or shifting of cargo, any defects in the hull or structural failure; and, (d) any slick of polluting materials and containers or packages seen drifting at sea. The purpose is to make responsible authorities aware, so that timely measures can be taken.

¹ The submission of proposals or information papers to the IMO, on issues falling under external exclusive EU competence, are acts of external representation. Such submissions are to be made by an EU actor who can represent the Union externally under the Treaty, which for non-CFSP (Common Foreign and Security Policy) issues is the Commission or the EU Delegation in accordance with Article 17(1) TEU and Article 221 TFEU. IMO internal rules make such an arrangement absolutely possible as regards existing agenda and work programme items. This way of proceeding is in line with the General Arrangements for EU statements in multilateral organisations endorsed by COREPER on 24 October 2011.

² OJ L 208, 5.8.2002, p. 10–27.

In addition, Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector³, 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. This includes the loss of containers at sea.

The said draft Union submission therefore falls under EU exclusive competence⁴.

³ OJ L 131, 28.5.2009.

⁴ A formal EU position under Article 218(9) TFEU is to be established in due time should the IMO Maritime Safety Committee eventually be called upon to adopt an act having legal effects as regards the subject matter of the said draft Union submission. The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*' (Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64).

Pre-session public release :

DECISIONS OF OTHER IMO BODIES

Comments on documents MEPC 73/19 and MEPC 74/8

Submitted by the European Commission on behalf of the European Union

SUMMARY

<i>Executive summary:</i>	This document comments on document MEPC 73/19 (Report of MEPC 73, paragraph 8.24 to 8.26 on reporting of lost containers at sea) and MEPC 74/8 (Report of the Correspondence Group on Marine Plastic Litter from Ships) related to the development of an action plan to address marine plastic litter from ships. It suggests a modification of SOLAS chapter V, with a view to making mandatory reporting of the loss of containers through a standardized procedure.
<i>Strategic direction, if applicable :</i>	4
<i>Outputs :</i>	4.3
<i>Action to be taken:</i>	Paragraph 12
<i>Related documents:</i>	CCC 1/12, A 30/11/1, MEPC 73/8/3 et MEPC 73/8/2, resolution MEPC.310.(73), MEPC 73/19, MEPC 74/8

Introduction

1 This commenting paper is submitted in accordance with the provisions of paragraph 6.12.5 of the Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies (MSC-MEPC.1/Circ.5/Rev.1). It contains a draft amendment to International Convention for the Safety of Life at Sea, (SOLAS), 1974 as amended, Chapter V, regulations 31 and 32 making mandatory reporting of the loss of containers/package goods to maritime authorities through a standardized reporting template as mentioned in the document MEPC 74/8, Report of the Correspondence Group on Marine Plastic Litter from Ships annex 3, row 10.

Background

2 During MEPC 73, the Committee noted that the working group on marine plastic litter had agreed that the establishment of an obligation to report timely, specific and relevant identification and location information of containers lost at sea would not only have a positive impact on understanding the contribution of lost containers to marine plastic pollution but also potentially improve safety of navigation and the safety of fishing vessels. Consequently,

the Committee agreed to invite the Maritime Safety Committee to consider the establishment of a mandatory system for reporting containers lost at sea, taking into account the discussions of the Working Group on Marine Plastic Litter on this matter (MEPC 73/WP.9, paragraphs 30 to 33) and the corresponding action in the Action Plan (resolution MEPC.310(73), annex, table of actions, row 10), subject to supporting proposals being submitted to MSC 101 by interested Member States and international organizations.

Identified issues

3 Consequences of the loss of containers at sea can be very damaging for the safety of navigation as well as for the marine environment. This phenomenon has become acute with the emergence of very large container ships whose capacity is linked to the increase in the number of containers on deck.

4 Container losses have a negative impact on the marine environment. Some of these containers contain hazardous goods. Containers may also contain a lot of plastic in all its forms, either as protective or packaging products or as commodities. Their release in the ocean therefore risks contributing to pollution by plastics and, in the long term, to the proliferation of microplastics. In addition, the dissemination of the contents of the containers lost at sea can take time depending on the degree of degradation of the containers.

5 In addition, containers at sea also represent a danger to navigation (drifting containers) and fishing (containers resting on the sea bed). Given incidents with lost containers at sea, posing a danger to navigation and to the environment, there is a need to improve reporting of the loss of containers or packaged goods from a ship, or observations of containers/package goods in the sea by the master to coastal state authorities whenever it occurs.

Proposals

7 To limit the risk to navigation and to the environment, information on the location of containers should be provided to the maritime community in a timely manner and container recovery measures should be taken as soon as possible.

8 Accurate reporting could also lead to reliable statistics on containers/package goods lost at sea, which are currently lacking.

9 In accordance with Article 8 of the Convention and Protocol I to MARPOL "Provision concerning reports on incidents involving harmful substances", "Article I - Duty to Report - (1) The master or other Officer in charge of any ship involved in an incident referred to in article II of this Protocol shall report the particulars of such incident without delay and to the fullest extent possible in accordance with the provisions of this Protocol."

Referring to paragraph II(1)(b) "When to Make Reports" "(1) The report shall be made when an incident involves "(b) a discharge or probable discharge of harmful substances in packaged form, including those in freight containers, portable tanks, road and rail vehicles and shipborne barges; or ...". This article is supplemented by Resolution A.851(20) "General principles for ship reporting systems and ship reporting requirements, including guidelines for reporting incidents involving dangerous goods, harmful substances and/or marine pollutants."

10 There is no equivalent provision in the SOLAS Convention specifically aimed at the obligation to notify the loss of containers/package goods in order to reduce the danger to navigation. The proposal to amend Regulations 31 and 32 of Annex V to the SOLAS Convention proposed in paragraph 11 aims to introduce:

- an obligation on the master or other Officer in charge of the ship to report the loss or sighting of containers/package goods without delay, including relevant information for

Coastal States, if this report has not already been made under Article 8 of the MARPOL Convention. This report must be completed at the ship's first port of call if the number of containers lost exceeds the number of reports made at the time of the event.

- an obligation to report to the Organization or, upon request, any other interested Parties.

11 To address the above-mentioned issues, it is proposed to amend Regulations 31 and 32 of Annex V to the SOLAS Convention as follows:

Regulation 31: Danger Messages

[1 No change]

2.1 The master of every ship involved in (a) the Loss (ship having lost one or more containers/packaged goods) or, (b) Observation (ship noting the presence of containers/packaged goods) of containers/packaged goods drifting at sea, is bound to communicate the particulars of such an incident by all means at his disposal without delay and to the fullest extent possible to ships in the vicinity and to coastal state authorities as well as to the flag state of the vessel reporting.

Where the loss of a container has been the subject of a report under Article 8 of the MARPOL Convention, the reference of this report shall be mentioned.

2.2 The coastal state authority[ies] shall report to the Organization and, upon request, any other interested Party on the loss of containers that occurred during the event and on the containers that have been recovered.

Paragraphs 2, 3 and 4 will be renumbered as paragraphs 3, 4 and 5.

Regulation 32: Information required in danger messages

The following information is required in danger messages:

[1 and 2 No change]

3 LOSS OF CONTAINER/PACKAGED GOODS

.1 DATE and TIME (UTC); From/To

The message number (type of report a) or b)) in chronological order if other container loss messages are sent following the first one. The message shall be marked "final" when it is made from the ship's port of arrival after comparing the ship's stowage plan with the conclusions of the post incident on-deck inspection if it is found that all lost containers have not been reported.

For From indicate: Name, address, telex and telephone number of the ship's owner and representative (charterer, manager or operator of the ship or their agent).

For To: Nearest Coastal Station

.2 TYPE OF REPORT

(a) Loss (ship having lost one or more containers/packaged goods)

(b) Observation (ship noting the presence of containers/packaged goods drifting at sea)

.3 SHIP'S IDENTITY IMO Number/Name/Call Sign/MMSI Number

.4 LAST PRESUMED POSITION OF OBJECT/CONTAINER LOST/LAST SEEN POSITION OF OBJECTS/CONTAINERS

Last seen position of object/container at sea, or last position of ship when the object/container was presumably lost

Position in latitude and longitude or true bearing and distance in nautical miles from a clearly identified landmark (where possible), where the loss of container occurred.

.5 NUMBER OF CONTAINERS /OBJECTS

.6 TYPE OF GOODS IN CONTAINERS

DG/PG : Y/N

IMO/UN/IMDG Code Number

.7 DESCRIPTION OF CONTAINERS/OBJECTS

Description of objects/containers: dimension, colour, marks, numbers, condition

Identification of container or containers lost at sea - in this case, information listed in subparagraphs (a) to (d) below shall be provided for each lost container:

(a) Identification number of the container and whether the loss of this container has already been reported under article 8 of the MARPOL convention. In this case, information listed under (b) and (c) below, shall not be provided.

(b) Cargo description according to the ship's manifest and dangerous goods manifest; and;

(c) Container operator name and contact information (i.e. the shipping line that issued the container bill of lading)

(d) Cause of loss

(e) Containers that have been recovered

.8 CARGO LEAKING?

Yes/No/Not visible

Description of pollution

.9 WIND DIRECTION AND SPEED

Indicates wind direction and speed in degrees and in m/sec. The direction always indicates from where the wind is blowing

.10 CURRENT DIRECTION AND SPEED AND/OR TIDE

Indicates current direction and speed in degrees and knots and tenths of knots. The direction always indicates the direction in which the current is flowing

.11 SEA STATE AND VISIBILITY

Sea state indicates the wave height in metres. Visibility should be indicated in nautical miles

.12 DRIFT OF OBJECTS/CONTAINERS

Indicates drift course and speed of pollution in degrees and knots or tenths of knots. In cases of air pollution (gas cloud), drift speed should be indicated in m/sec

.13 ADDRESS WHERE CARGO INFORMATION CAN BE FOUND

.14 ANY OTHER RELEVANT INFORMATION

Paragraphs 3, 4, and 5 shall be re-numbered as paragraphs 4, 5 and 6.

Action requested of the Committee

12 The Committee is invited to consider the comments in paragraph 10 and the proposed amendments to SOLAS Convention chapter V, Regulations 31 and 32 presented in paragraph 11 and take action as appropriate.