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COMMISSION STAFF WORKING DOCUMENT

Union submission to the International Maritime Organization's seventh session of the Sub-Committee on the Implementation of IMO Instruments on a review of the Model Agreement for the authorisation of recognised organisations acting on behalf of the Administration

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PURPOSE

This Staff Working Document contains a draft Union submission to the seventh session of the Sub-Committee on the Implementation of IMO Instruments (III7) of the International Maritime Organization (IMO). III 7 is scheduled from 12 to 16 July 2021.

It provides an assessment of paragraph 6.5.5 of the draft model agreement ((III 6/15, annex 8) in view of paragraph 5.3.2.4 of part III of the Code for Recognized Organizations (RO Code). That assessment is based on the Union position established by Council Decision (EU) 2020/721¹. It takes into account the ongoing exercise to align the provisions of the draft model agreement with part III of the RO Code.

The draft submission therefore proposes amendments to paragraph 6.5.5 of the draft model agreement to achieve this alignment with paragraph 5.3.2.4 of the recommendatory Part III of the RO Code. The proposal would lead to minor changes in the draft circular, making it more consistent with the RO Code. It does so within the confines of the Union position established by the Council Decision (EU) 2020/721.

The issue of revision of the Model Agreement as set out in III 5/8 is covered by Directive 2009/15/EC on common rules and standards for ship inspection and survey organisations². Article 5 of the Directive provides that:

1. “Member States which take a decision as described in Article 3(2) of that Directive shall set out a ‘working relationship’ between their competent administration and the organisations acting on their behalf.
2. The working relationship shall be regulated by a formalised written and non-discriminatory agreement [...] including at least: (a) the provisions set out in Appendix II of IMO Resolution A.739(18) on guidelines for the authorisation of organisations acting on behalf of the administration, while drawing inspiration from the Annex, Appendices and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on a model agreement for the authorisation of recognised organisations acting on behalf of the administration. [...]”

Given that the adoption of draft MSC-MEPC.5 Circular may affect common rules contained in Article 5 of Directive 2009/15 or alter their scope within the meaning of the last limb of Article 3(2) TFEU, the draft Union submission falls under EU exclusive competence.³ This

¹ Council Decision (EU) 2020/721 of 19 May 2020, as amended by Council Decision (EU) 2020/1580 of 23 October 2020.

² OJ L 131, 28.5.2009, p. 47–56

³ An 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).

Staff Working Document is presented to establish an EU position on the matter and to transmit the document to the IMO prior to the required deadline of 7 May 2021.⁴

⁴ 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.

SUB-COMMITTEE ON IMPLEMENTATION
OF IMO INSTRUMENTS
7th session
Agenda item 15

III 7/15/XX
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REVIEW OF THE MODEL AGREEMENT FOR THE AUTHORISATION OF RECOGNISED ORGANISATIONS ACTING ON BEHALF OF THE ADMINISTRATION

Submitted by the European Commission on behalf of the European Union [and IACS]

SUMMARY

Executive summary: This paper provides an assessment of paragraph 6.5.5 of the draft model agreement ((III 6/15, annex 8) with paragraph 5.3.2.4 of the recommendatory part III of the RO Code, and proposes amendments to paragraph 6.5.5 of the draft model agreement to achieve alignment with paragraph 5.3.2.4 of the recommendatory Part III of the RO Code.

Strategic direction, if applicable: 1

Output: 1.35

Action to be taken: Paragraph 7

Related documents: III 6/15 (annex 8); MSC 102/14/1; MSC 102/24 (paragraph 14.8)

Background

1 The Committee, at its 102nd session, considered the draft MSC-MEPC.5 circular on model agreement for the authorization of recognized organizations acting on behalf of the Administration (III 6/15, annex 8) together with paper MSC 102/14/1 (Norway et al.), proposing either the deletion of, or amendments to, paragraph 6.5.5 of the draft model agreement.

2 After extensive debate, and noting that views on the matter were almost evenly divided, the Committee instructed III 7 to further consider only the text of paragraph 6.5.5. It requested III 7 take into account the amended text proposed in paragraph 10 of document MSC 102/14/1 and in this context to also consider paragraph 5.3.2.4 of the recommendatory part III of the RO Code, with a view to advising the Committees on whether the text of both paragraphs should be aligned.

Discussion

3 In offering its advice to the Committee on the alignment of the two paragraphs referred to in paragraph 2 above, the co-sponsors consider it important to read paragraph 5.3.2.4 of part III of the RO Code in full context (i.e. including the chapeaux):

"5.3 The flag State should establish a system to ensure the adequacy of statutory certification and services provided. Such a system should, inter alia, include the following items:

...

.2 procedures for reporting to the flag State by the RO and the processing of such reports by the flag State. The following reporting requirements should be considered:

...

.4 the RO should inform the flag State, as soon as possible, of any dangerous occurrences, accidents, machinery or structural breakdowns, or failures that they are aware of on a ship;..."

4 Paragraph 6.5.5 of the draft model agreement reads:

"6.5 Other reporting:

...

.5 the RO shall inform the Administration, as soon as possible, of any dangerous occurrences, accidents, machinery or structural breakdowns, or failures that they are aware of on a ship;"

5 Comparing the text referenced in paragraphs 3 and 4 above, the co-sponsors consider that "dangerous occurrences" and "accidents" in paragraph 5.3.2.4 of part III of the RO Code are with respect to the "statutory certification and services" provided by the RO on behalf of the flag State; whereas the same "dangerous occurrences" and "accidents" in paragraph 6.5.5 of the draft model agreement are undefined and go beyond the scope of responsibilities of RO's relating to "statutory certification and services" as laid out in paragraph 5.3.2.4 of part III of the RO Code.

Proposal

6 While paragraph 10 of paper MSC 102/14/1 proposed a clarification that linked "dangerous occurrences" and "accidents" with incidents that required "immediate repair or repair by a given due date", the co-sponsors consider that in order to fully align paragraph 6.5.5 of the draft model agreement with paragraph 5.3.2.4 of part III of the RO Code, paragraph 6.5.5 of the draft model agreement should be revised (and clarified) to read⁵:

"6.5 Other reporting:

...

.5 the RO shall inform the Administration, as soon as possible, of any dangerous occurrences, accidents, machinery or structural breakdowns, or failures, which relate to the scope of statutory certification and services as defined in the RO Code, that they are aware of on a ship;"

Action requested of the Sub-Committee

⁵ Tracked changes are indicated using "strikeout" for deleted text and "grey shading" to highlight all modifications and new insertions, including deleted text

7 The Sub-Committee is invited to consider the foregoing, and in particular the proposal in paragraph 6, and take action as appropriate.
