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COMMISSION STAFF WORKING DOCUMENT

Union submission to the 102nd session of the Maritime Safety Committee of the IMO from 13 – 22 May 2019 in London, concerning a Union commenting paper on the new output on containers lost at sea in application of the action plan to address marine plastic litter from ships, submitted by Vanuatu

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PURPOSE

At its 101st session, the Maritime Safety Committee (MSC) invited interested parties to submit proposals on the issue of lost containers for the 102nd session MSC of the IMO. Vanuatu made such a submission (MSC 102/21/13) for a new output for the current IMO biennium on containers lost at sea to apply the action plan to address marine plastic litter from ships. The document in Annex contains a draft Union submission to the 102nd session of the Maritime Safety Committee of the IMO and proposes a Union commenting paper, supporting in principle the Vanuatu submission.

The reporting of incidents involving lost containers is regulated in EU law in Directive 2002/59/EC¹ of the European Parliament and of the Council of 27 June 2002. It establishes a Community vessel traffic monitoring and information system. Article 17(1) 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:

(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 (affected coastal States) aware, so that timely measures can be taken.

In addition, Directive 2009/18/EC² 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 sector, in Article 6 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.

There is therefore already, at the European Union level, a mandatory system in place for detection, reporting, positioning, and tracking. For the purposes of reporting under Directive 2002/59/EC a reporting template has been developed by the High Level Steering Group established by Commission Decision 2016/566³ and is systematically used. There is an

¹ OJ L 208, 5.8.2002, p. 10–27

² OJ L 131, 28.5.2009, p. 114–127

³ OJ L 96, 12.4.2016, p. 46–49

interest in aligning the proposed international reporting system with what is already in operation in the EU for the EU MS as coastal States.

These Union rules could serve as inspiration for an international mandatory reporting system of lost containers and should help to identify the location and tracking of containers lost or detected at sea and therefore facilitate recovery operations undertaken by the coastal State(s). Any new same or similar reporting obligation would be added to articles 31 and 32 of Chapter V to the Convention of the Safety of Life at Sea (SOLAS), requiring a danger message and information to be transmitted to the concerned coastal State (or designated authority).

In addition, as part of the wider context, reference may also be made to the Waste Framework Directive⁴, the Environmental Liability Directive⁵ and the Marine Strategy Framework Directive⁶. These are however not directly relevant to the present matter.

The said draft Union submission therefore falls under EU exclusive competence⁷.

Against this background, the draft commenting paper in annex is proposing a small change to the Vanuatu submission in that the new output should read: "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."

This SWD is presented with a view to establishing an EU position on the matter and thus allowing transmission of the document to the IMO prior to the required deadline of 24 March 2020⁸.

⁴ OJ L 312, 22.11.2008, p. 3–30

⁵ OJ L 143, 30.4.2004, p. 56–75

⁶ OJ L 164, 25.6.2008, p. 19–40

⁷ 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).

⁸ 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.

MARITIME SAFETY COMMITTEE
102nd session
Agenda item 21

MSC 102/21/XX
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WORK PROGRAMME

Comments on document MSC 102/21/13 submitted by Vanuatu proposing a new output on containers lost at sea in application of the action plan to address marine plastic litter from ships

Submitted by the European Union and ...[WSC], [BIMCO]

SUMMARY

<i>Executive summary:</i>	This document 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.
<i>Strategic direction :</i>	SD 2, SD 4, SD 6
<i>Output :</i>	N/A
<i>Action to be taken:</i>	Paragraph 13
<i>Related documents:</i>	MEPC 73/19 (Annex 10), MEPC 73/8/3 resolution MEPC.310.(73) and MEPC 74/18 paragraphs 8.38 and 8.39

Introduction

1. This document 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 Environmental Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.5/Rev.1) and provides comments on document MSC 102/21/13

Aim

2. This document expresses support in principle of the request in document MSC 102/21/13 for a new output, and provides information regarding what action is already required under Union law.

Discussion

3. As other coastal States, EU coastal States regularly face the consequences of container losses off their shores. After severe events (such as in adverse weather conditions⁹), the consequences can be very negative for maritime safety and the environment, including economic ones, for coastal regions.

4. For this reason, at the EU level, the issues of detection, reporting, positioning, and tracking are covered in the EU legislation on Vessel Traffic Monitoring and Information Systems (Directive 2002/59/EC¹⁰¹¹) as well as (the issue of reporting) in Investigation of Accidents in the maritime transport sector (Directive 2009/18¹²).

5. For the purposes of reporting containers lost at sea, a reporting template has been elaborated¹³ by the EU coastal States together with the European Maritime Safety Agency and is systematically used. This has been established practice since 2012. The system is operational (technically developed and operated by EMSA) and the required incident reporting is, and has been, used to share information among all concerned coastal States, as well as to provide the necessary navigational warnings to mariners, in recent incidents¹⁴.

6. At the 73rd session of MEPC, in October 2018, the EU and its Member States submitted MEPC 73/8/3 (Austria et al.), proposing a list of elements for inclusion in the action plan on marine plastic litter from ships and a list of actions to be coordinated at the international level as part of a programme to address marine plastic litter from ships. This was in support to the action plan to address marine plastic litter from ships as adopted by MEPC 73 (Resolution MEPC.310(73)). In addition, the joint WSC/BIMCO submission (MEPC 73/8/11) expressed support in principle for a mandatory reporting requirement. Measures 10 and 11 of the action plan specifically target the loss of containers at sea. They consider (i) the establishment of a compulsory system of formatted declarations; (ii) an obligation to report through a standardised procedure; and, (iii) based on additional information to be provided by interested parties, possible means to communicate their location.

7. MEPC 74 agreed that the best way to move forward on these measures (10 and 11) would be for interested Member States and international organisations to submit proposals for a new output to the MSC. At its 101st session, the Committee noted that *"The MEPC is invited to note the general support of the [MSC] Committee to tackle the problem of containers lost at sea and that Member States and international organizations have been invited to submit proposals for a relevant new output to MSC 102."*

⁹ This issue was also raised at the WMO/IMO International Symposium: "Extreme Maritime Weather: Towards Safety of Life at Sea and a Sustainable Blue Economy" held at IMO, 23/25 October 2019. NCSR 7/INF.12 (IMO and WMO Secretariats): contains in the annex the preliminary report of the WMO/IMO International Symposium.

¹⁰ Article 17(1) on incident reporting, regulates the detection and reporting of containers or packaged goods lost at sea, either by the master losing or 'spotted' by another vessels. The master of a ship sailing within a member State search and rescue region/exclusive economic zone or equivalent, shall immediately report to the coastal station responsible for that geographical area:

(d) any slick of polluting materials and containers or packages seen drifting at sea.

¹¹ Reporting, positioning and tracking are enabled via the Union Maritime Information and Exchange System (SafeSeaNet) integrated maritime services. The reporting is done through the Incident Reporting into SafeSeaNet. The purpose is to make responsible authorities aware, so that timely measures can be taken. For example, in the case of lost containers at sea, a navigational hazard warning could be sent out. On the basis of the incident reporting, SafeSeaNet has features (so called Automated Behaviour Monitoring (ABM)) enabling the positioning and therefore tracking of the area/location where the lost container has been spotted (without the need for any locator mechanism fitted in the container as such).

¹² Article 6 of the Directive provides that Member States' maritime accident investigation bodies must be 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 loss of containers at sea.

¹³ In the established Governance Body (the High Level Steering Group).

¹⁴ E.g. MSC Zoe (in January 2019), BG Jade and OOCL Rauma (both in February 2020)

8. The European Commission, in July 2019, organised a specific workshop with interested and concerned stakeholders to identify issues and make progress on preventing containers lost at sea (<https://webgate.ec.europa.eu/maritimeforum/en/node/4405>).

9. The above-mentioned elements could be considered as relevant practices and experiences for this issue if taken further in the international context, and could serve as a basis for discussion in the relevant sub-committee(s).

Proposal

10. The co-sponsors of this document concur with the need for a new output on the mandatory reporting of containers lost at sea and are therefore, in principle, in favour of the proposal made in document MSC 102/21/13. The co-sponsors are of the opinion that the proposed output falls within the scope of not only Strategic Direction (SD) 4 and 6 of the Organization's Strategic Plan 2018-2023, but also SD 2, as the output aims to establish an effective and coherent international regulatory framework, compatible with the adoption and integration of new and advancing technologies, without imposing unnecessary burdens¹⁵.

11. Moreover, the co-sponsors of this document are of the opinion that the proposed new output should provide clarification on a mandatory reporting procedure following detection of containers lost at sea. Furthermore, they are of the opinion that that, in turn, may enhance the positioning, tracking, and recovery of containers lost at sea¹⁶. In the context of digitalization of information transfer between stakeholders, and recalling Measures 10 and 11 of the IMO Action Plan to address plastic litter from ships, the proposed new output could include consideration of the usage of new and emerging technologies, including, but not limited to, container tracking and tracing, geolocation and automated radio communication and satellite positioning (GNSS) reporting technologies, drawing inspiration from what is already in operational use among the EU coastal States.

12. Against this background it is proposed that the new output should read: "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."

Action requested of the Committee

13. The Committee is invited to consider the above information and the comments provided in paragraphs 10-12 and take action as appropriate.

¹⁵ Consequently, consideration should be given to point 2 – record keeping – in Annex 1 to Document MSC 102/21/13 which should indicate a start-up of such record keeping.

¹⁶ It is noted that document MSC 102/21/13 includes references to several incidents where it appears that the formal accident investigation reports have yet to be published. The details of some of these incidents may also be in dispute.