



Brussels, 19.2.2021  
SWD(2021) 39 final

**COMMISSION STAFF WORKING DOCUMENT**

**Union submission to the International Maritime Organization's 103<sup>rd</sup> session of the Maritime Safety Committee commenting on a proposal to develop a joint MSC-MEPC circular on amendments to HSSC Survey Guidelines**

## **Union submission to the International Maritime Organization's 103rd session of the Maritime Safety Committee commenting on a proposal to develop a joint MSC-MEPC circular on amendments to HSSC Survey Guidelines**

### **PURPOSE**

This Staff Working Document contains a draft Union submission to the International Maritime Organization's (IMO) 103<sup>rd</sup> session of the Maritime Safety Committee (MSC 103). It comments on a submission to the IMO from the United Arab Emirates, Russian Federation and the International Association of Classification Societies. Their paper proposes to develop a joint circular of the IMO's Maritime Safety and Marine Environment Protection Committees on amendments to Survey Guidelines under the Harmonized System of Survey and Certification (HSSC). The Union submission suggests further consideration of the issue at the Sub-Committee on Implementation of IMO Instruments.

The Maritime Safety Committee is scheduled to hold its 103<sup>rd</sup> session from 5 to 14 May 2021 in a virtual format. The submission deadline for commenting papers is 16 March 2021. This submission is made in accordance with paragraphs 4.6 and 6.12.2 of the Organization and method of work of the Maritime Safety Committee and the Marine Environment Committee and their subsidiary bodies (MSC-MEPC.1/Circ.5/Rev.1).

Regulation (EC) No 391/2009<sup>1</sup> lays down common rules and standards for ship inspection and survey organisations. The criterion contained in Annex I, part B, point 7(k) of the Regulation requires a recognised organisation to ensure that the statutory surveys and inspections are carried out in accordance with the survey guidelines under the harmonised system of survey and certification adopted by the IMO.

The said draft Union submission therefore falls under EU exclusive competence.<sup>2</sup> This 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 16 March 2021.<sup>3</sup>

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<sup>1</sup> Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations; OJ L 131, 28.5.2009, p. 11–23.

<sup>2</sup> 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).

<sup>3</sup> 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  
103rd session  
Agenda item 21

MSC 103/2/X  
xx February 2021  
Original: ENGLISH

Pre-session public release:

## DECISIONS OF OTHER IMO BODIES

### Outcome of A31: comments on proposal to develop a joint MSC-MEPC circular regarding amendments to HSSC Survey Guidelines

Submitted by the European Commission on behalf of the European Union

#### SUMMARY

*Executive summary:* This document comments on document MSC 102/2/3 (UAE and al) which proposes to amend a paragraph to the annex of MSC.1/Circ.1500/Rev.1, MSC.1/Circ.1587 and on document MSC 102/2/4 discussing the process of updating the *Survey Guidelines under the Harmonized System of Survey and Certification (HSSC)* and proposing a joint MSC-MEPC circular.

*Strategic Direction, if applicable:*

*Output:* OW 16

*Action to be taken:* Paragraph 13

*Related documents:* MSC 102/2/2, MSC 102/2/3, MSC 102/2/4, MSC 102/24 (§2.2) and A 31/10/2

#### 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 Environment Protection Committee and their subsidiary bodies (MSC-MEPC.1/Circ.5/Rev.1) and provides comments on paragraph 5.1 of MSC 102/2/2 and related document MSC 102/2/3 and MSC 102/2/4 aiming that the proposals made in these documents do not lead to a lower safety level.

## Background

2 31<sup>st</sup> Assembly noted that several 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. The Assembly therefore invited MSC 102 and MEPC 75 to consider document A 31/10/2 and take action as appropriate.

3 At the time of 31<sup>st</sup> Assembly, one of the examples provided in document 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. In paragraph 5 of this document, the co-sponsors raised no technical objections to the associated HSSC provisions in the cases cited. 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".

4 As regards the 2019 HSSC, MSC 102/2/3-4 (United Arab Emirates and al) have followed up on the decision at 31<sup>st</sup> Assembly 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.

Due to time constraints, MSC 102 agreed to postpone consideration of this issue to MSC 103, including consideration of documents A 31/10/2, MSC 102/2/3 and MSC 102/2/4,(MSC 102/24 § 2.2). This document is therefore submitted within this framework.

## Discussion

5 It can be considered 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.

6 For example,

(OR) 1.4.1.2 verifying that, if applicable, the 15 ppm bilge alarm has been calibrated by the manufacturer or a person authorised by the manufacturer and that a valid calibration certificate is available on board. \*

(OIn) 1.3.3.3 examining the oil content meter (15 ppm alarm and bilge monitor) for obvious defects, deterioration or damage and checking the record of calibration of the meter when done in accordance with the manufacturer's operational and instruction manual (MARPOL 90/04/15 Annex I reg.14).

(EI) 1.1.4.24 testing that the engine of the rescue boat(s) and of each lifeboat, when so fitted, start satisfactorily and operate both ahead and astern (SOLAS 74/00 reg.III/19);

(EI) 1.1.4.11 examining the arrangements for oil fuel, lubricating oil and other flammable oils and testing the remote closing of valves for oil fuel, lubricating oil and other flammable oils and confirming, as far as practicable and as appropriate, the operation of the remote means of closing the valves on the tanks that contain oil fuel, lubricating oil and other flammable oils (SOLAS 74/00 reg.II-2/4.2.2.3.4) (SOLAS 74/88 reg.II-2/15.2.5);

are not directly linked to requirements in mandatory instruments.

Nevertheless, these first verifications are essential for the prevention of pollution of the marine environment and to avoid serious consequences for the company and the crew in case of proven pollution. The second test is equally essential to ensure the safety of people in the event of an abandonment of a vessel. The third test is also essential for fire safety in the engine room. According to the principles proposed by MSC 102/2/3 and MSC 102/2/4, these provisions might not be included in the HSSC guidelines since they are not specifically ascribed to the underlying conventions but are, however, intrinsically linked and required in order to fulfill the substance of the mandatory requirements. As a result, in case they are excluded from the guidelines the result would be a severely reduced level of pollution prevention or safety of the ship and its crew.

7 In particular, the HSSC guidelines are expanding in a descriptive way the steps and the items that a surveyor should verify, before issuing a certificate, as provided by the relevant international conventions. This descriptive guidance of how to verify the relevant items might include also steps or items which are not *per se* provided by the relevant conventions but they are intrinsically and logically linked to the mandatory items in such a way that without their inclusion the purpose of the survey would have been negated.

8 The consequences of the decisions on this matter should be carefully analysed as it would not be fitting to degrade, by this means, the level of certification of ships and consequently the level of safety or environmental protection. Indeed, it should be noted that for many years now, the HSSC code has included numerous tests or verifications that make it possible to ensure, for example, the proper functioning of an installation without this being described in detail in the regulations. These tests are carried out today and they ensure a good level of safety and pollution prevention. 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.

9 Furthermore, the development of objective-based approaches and functional requirements will make it increasingly difficult to link an HSSC item to a regulatory requirement since the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), 2019 have been built on a very prescriptive approach.

## **Proposal**

10 Considering paragraph 8, it would seem relevant and prudent, before any hasty decision is taken, to ask the III Subcommittee to proceed with the identification and analysis of the gaps, if any, between the HSSC and the mandatory requirements, to examine which of the currently described items in the HSSC Guidelines might be affected by the approach proposed in MSC 102/2/3-4 and to further elaborate what should be conceived as a direct link between items of the HSSC and the mandatory requirements.

11 Taking into account the risk of a lower safety level or protection of the marine environment, there is merit in considering further discussion of the draft amendments to MSC.1/Circ.1587 and MSC.1/Circ.1500/Rev.2 with the exception of the last phrase "The HSSC Survey Guidelines should not include survey instructions for items which do not have a direct link to mandatory instruments", provided a high level of safety and environmental protection is maintained. In particular, the direct link to mandatory requirements should not mean that in describing how the items should be surveyed, additional details and items intrinsically linked to the mandatory requirements are excluded from the scope of the HSSC.

12 The draft joint MSC-MEPC circular as proposed in MSC 102/2/3-4 (Russian Federation, the United Arab Emirates and IACS), should be also considered for further discussion provided a high level of safety is ensured.

**Action requested of the Committee**

13 The Committee is invited to consider the proposals in paragraph 10 to 12 above and take action as appropriate.