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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Delegations will find attached document SWD(2020) 133 final.

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COMMISSION STAFF WORKING DOCUMENT

Union submission to the 103rd session of the Maritime Safety Committee of the IMO on a new output for the Comprehensive Review of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and Code

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PURPOSE

The document in Annex contains a draft Union submission to the 103rd session of the Maritime Safety Committee (MSC 103) of the International Maritime Organization (IMO). It suggests a new output to be considered by the Sub-Committee on Human Element, Training and Certification. This output would concern a Comprehensive Review of International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and Code (STCW Convention and Code). It would adapt the STCW Convention and Code to new developments in ship technology, environmental protection and climate change, thus ensuring up-to-date and internationally harmonised rules for the training of seafarers.

MSC was scheduled to hold its 103rd session from 16 to 20 November 2020. The IMO's meeting schedule has been affected by the COVID-19 pandemic and a new date for MSC 103 has yet to be announced. The submission deadlines currently remain unchanged. 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). It takes into account the Application of the Strategic Plan of the Organization (resolution A.1111 (30)).

Training requirements of seafarers are regulated in EU law in Directive 2008/106/EC¹. It establishes a minimum level of training of seafarers. The Directive obliges Member States to take the necessary measures to ensure that seafarers serving on ships receive a training that, as a minimum, covers the requirements of the STCW Convention, as laid down in Annex I to the Directive (Article 3 of Directive 2008/106/EC), including, where appropriate, the applicable provisions of the STCW Code (Article 1(21) of Directive 2008/106/EC). As a consequence, the amendment of the STCW Convention and the Code may affect common EU rules or alter their scope, within the meaning of Article 3(2) TFEU.

The said draft Union submission therefore falls under EU exclusive competence.²

¹ Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers; OJ L 323, 3.12.2008, p. 33–61.

² 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).

This Staff Working Document 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 14 August 2020.³

³ 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.

WORK PROGRAMME
Sub-Committee on Human Element, Training and Certification

Proposal for a new output for the Comprehensive Review of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and Code

Submitted by the European Commission on behalf of the European Union

SUMMARY

Executive summary: This document suggests a new output to be considered by the Sub-Committee on Human Element, Training and Certification concerning a comprehensive review of the STCW Convention and Code. The aim is to adapt the STCW Convention and Code to new technical developments in shipping, environmental protection and climate change, thus ensuring that it continues to provide a set of globally recognised standards for training and certification of seafarers.

Strategic direction, if applicable: SD 1, SD 2, SD 5 and SD 6

Output: Not applicable

Action to be taken: Paragraph 12

Related documents: HTW 6/12/3, HTW 6/12/5, HTW 6/12/6, HTW 6/13, ISWG-MASS 1/2/20, MSC 102/5/17, MSC 102/5, MSC 102/5/1, HTW 7/9, HTW 5/15/5, HTW 5/16; HTW 6/9, HTW 6/9/1; MSC 100/17/7, FAL.5/Circ.39/Rev.2, MSC 101/21/1, HTW 5/INF.5, HTW 4/INF.4, MSC 101/28/18, HTW 7/11, HTW 7/6, HTW 6/12 and Corr.1, HTW 6/13, MSC 101/24, HTW 7/12, MEPC 73/19, MEPC 74/18. Add1, NSCR 4/29

Introduction

1 This document is submitted 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), taking into account the *Application of the Strategic Plan of the Organization* (resolution A.1111 (30)).

2 The submission suggests a new output for the Comprehensive Review of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and Code.

Background

3 The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, was adopted with the objective of promoting safety of life at sea and the protection of the marine environment by establishing international standards of training, certification and watchkeeping for seafarers.

4 The 1978 STCW Convention entered into force on 28 April 1984. Amendments thereto were adopted in 1991, 1994, 1995, 1997, 1998, 2004, 2006, 2010, 2014, 2015 and 2016. Major amendments were adopted in 1995 (with the adoption of the STCW Code) and in 2010.

5 The 1995 amendments introduced, inter alia, the STCW Code with its tables of competence, functions and levels of responsibility, the concept of flag State endorsements attesting the recognition of certificates, and provisions on quality standards systems.

6 The 2010 amendments (“Manila amendments”) included, among others, improved measures to prevent fraudulent practices associated with CoCs (Certificates of Competency). It also contained revised requirements on hours of rest in line with the provisions of hours of work of the Maritime Labour Convention (MLC, 2006), new requirements for the prevention of seafarers’ fatigue and drug and alcohol abuse, enhanced standards for engineer officers, updated competence standards for personnel serving on board all types of tankers, improved monitoring of Parties’ compliance with the Convention and established standards of training for ratings now included in the STCW Convention and Code.

5 The Conference of the Parties that adopted the 2010 amendments also adopted other resolutions, including resolution 15 on “Future amendments and review of the STCW Convention and Code”, which:

“RECOMMENDS FURTHER that a comprehensive review of the STCW Convention and Code should, as far as possible, be carried out every ten years to address any inconsistencies identified in the interim; and to ensure that they are up to date with emerging technologies”.

6 At HTW 6, the debate on ICS’s proposal for a comprehensive review of the STCW Convention and Code (HTW 6/12/3) showed that the majority of Member States and international organizations that spoke during the discussion expressed support for conducting a comprehensive review of the STCW Convention and Code.

7 The HTW Sub-Committee subsequently invited interested Member States and international organisations to note the comments made during HTW 6 and to submit a proposal for a new output to the MSC.

IMO's objectives

8 This new output is fully in line with the IMO’s vision statement declared in Resolution A.1110(30) concerning the Strategic Plan for the Organization for the six-year period 2018 to 2023, as it will support to uphold IMO’s leadership role as the global regulator of shipping by focusing on the review, development and implementation of and compliance with IMO instruments. Moreover, this new output will contribute to respond to the challenges posed by the expansion of the global fleet and the acceleration in the development of new and advancing technologies, which increase the demands on the seafarers, as the Strategic Plan recognised. The proposal follows the Overarching Principles established in the Strategic Plan, in which the IMO has committed itself to consider the human element in the review, development and implementation of new and existing requirements, including skills, education and training, and human capabilities, limitations and needs.

Need

9 Since the comprehensive review of the STCW Convention and Code that concluded in the 2010 Manila amendments, the Convention and the Code have only been amended three times to date. Further amendments are likely to be adopted over the short and medium-term, taking into account the items in the Sub-Committee's work programme that could also lead to a number of potential amendments.

10 Developments in the shipping industry, meanwhile, particularly those related to the operation of ships, would in any case suggest the need for such a review to be conducted in the short term.

11 The outcome of HTW 6, as referred in paragraph 12.33.1 of the Report to the Maritime Safety Committee (HTW 6-13) was that, if the comprehensive review is to be initiated, the finalisation and entry into force of the amendments, would take a lengthy period of time.

12 Regardless of how the review is undertaken, either by way of a targeted review or by a comprehensive review, the resulting revision is not anticipated to come fully into effect for a number of years until the process is completed. If initiated in 2021 and taking into account that, as with the 1995 and the 2010 amendments a transitional period would be adopted at the end of the process, amendments for some of the provisions might not be fully in force until very close to the end of the decade. This would be almost two decades after the adoption of the Manila amendments. Therefore, if preference is for a targeted review, the rest of the Convention and the Code would need to be applicable until 2040. By then, a comprehensive review might need to be addressed. In order to ensure that the STCW Convention and Code remains fit for purpose and flexible to respond to the pace of change over the next 20 years, it is therefore important to consider a comprehensive review already at this stage.

Analysis of the issue

13 A comprehensive review would lead to a revision of the STCW Convention and Code, opening up the whole instrument for consideration. The areas listed below are subjects/topics that demonstrate the need for a comprehensive review of the STCW Convention and Code.

13.1 Current pace of technical developments and digitalisation. Within the last decade vessels and equipment have evolved considerably. Technological developments in shipping, as well as environmental challenges have provided the industry with new types of vessels and equipment, requiring new competences for seafarers. Furthermore, the same technological developments open new possibilities to deliver training as well as certification mechanisms. The introduction of more complex digital and sustainable technologies on board requires seafarer education and training to include related standards of competence. Attention should be paid to the following:

- a) Although training requirements covering digital technologies are already incorporated in the text of the STCW Convention and Code, including also training required for electro-technical officers and ratings, competences need to be reviewed to identify gaps and loopholes. This is especially the case in the field of electronics and information and communications technology, including cybersecurity. Moreover, environmental challenges need to be considered.
- b) Trials for Maritime Autonomous Support Ships (MASS) have already been initiated following the different initiatives put forward mainly by the manufacturers. A legislative scoping exercise by the IMO Maritime Safety Committee is already in hand and will conclude soon. Training requirements and standards for non-seagoing personnel cannot be included in the STCW Convention and Code, which applies - in accordance with its Article III - only to seafarers serving on board seagoing ships. It is, however, necessary to start looking at training and certification needs for seafarers who will operate those vessels, as in the near future many of those vessels will operate with reduced crew. A comprehensive

review will identify where these training and certification requirements can be addressed, taking into account the results of the regulatory scoping exercise.

- c) The e-certification, already introduced by some Parties, requires amendments to the STCW Convention and Code. Such amendments would facilitate the issue of certificates for administrations, seafarers and the industry. It will be important also to identify how e-certification can be covered within the scope of the STCW Convention and Code. This is also relevant to avoid fraudulent practices in the issuing of certificates. The results of the correspondence group established in HTW 6 are to be taken as basis.

With the introduction of new technologies, it is envisaged that more training can be obtained using e-learning technologies. Therefore, a review of the STCW Convention and Code would allow to identify areas where the use of these e-learning technologies could replace shore-based training, including methods for assessment of competence.

13.2 Concerns about the quality of onboard training. Onboard training represents an important part of the training process for future seagoing officers. As part of a comprehensive review of the STCW Convention and Code, it is important to focus on improving the quality of the required period of onboard training, taking also into account up-to-date learning technologies, including simulators. At a time when it is difficult for cadets to complete the required period of seagoing service due to the non-availability of vessels, the new output on the “Development of measures to ensure quality of onboard training as part of the mandatory seagoing service required by the STCW Convention” can serve as the basis for the review.

13.3 Challenges related to implementation by Parties. The comprehensive review of the STCW Convention and Code should explore different possibilities to improve the requirements for implementation and evaluation arising from the so-called STCW White List as per MSC.1/Circ.1163 and the independent evaluation.

13.4 Development of training. The current IMO process is to start developing training standards only after the adoption of the IMO instruments in respect of which said training is necessary. In some cases, this may take years, resulting in a misalignment between the date of entry into force of the provisions or standards and the relevant training standards. Examples include, but are not limited to, the training standards for personnel serving on board ships operating in polar waters and for personnel on ships subject to the IGF Code. In the short term, examples also cover strengthening the environmental training provisions to explicitly address the management of onboard plastics and marine plastic litter. The current process for developing training standards does not provide a consistent and sustainable approach for responding to the demands of training stemming from the introduction of new technologies on board ships. As new technologies continue to appear, it is imperative to ensure seafarers are properly trained and competent to use and interact with developing technology. There are several key issues that IMO must address in order to provide for a sustainable process in support of the introduction of new technologies. The comprehensive review of the STCW Convention and Code should be a means for this.

13.5 Addressing inconsistencies. A series of inconsistencies can be identified in the text of the STCW Convention and Code. This is the result of several amendments that have been adopted throughout the years. A review of the STCW Convention and Code should look at those inconsistencies, not least in the tables of competence, resulting in the proposal to introduce necessary corrections throughout the text. This would contribute to enhance the consistency and the uniform implementation of the STCW Convention and Code.

13.6 Addressing interpretations. Inconsistent interpretations of the various standards have been identified as part of the process of implementation and enforcement. The comprehensive review of the STCW Convention and Code opens the opportunity to clarify issues arising from inconsistent interpretations of the various standards, including those related to near coastal voyages, in particular the entering of an undertaking among Parties.

13.7 Addressing taxonomy and terminologies that have changed or are inconsistent. The newly developed taxonomy should be considered when reviewing the STCW Convention and Code in order to ensure the consistency of the verbs used in the STCW Convention and Code defining the standards of competence with the action verbs used in modern educational standards. The report of the correspondence group on Action Verb Taxonomy for Model Courses can serve as support during the comprehensive review process.

13.8 Revalidation. As demonstrated by the COVID-19 pandemic, in exceptional circumstances such as pandemics or other *force majeure* situations, it may not be possible to replace crew members as planned. Seafarers may have to remain on board for longer than expected during which their certificates are due to expire. A comprehensive review of the Convention and Code would allow to identify provisions that could be amended or new provisions that would need to be added to allow for limited extension of validity of certificates and endorsements, whenever such exceptional circumstances occur.

Analysis of implications

14 The suggested new output may require holding additional high-level meetings to discuss the comprehensive review of the Convention and put additional burden on the Secretariat, as was demonstrated by the process leading to the 2010 Manila Amendments. The work burden in the Sub-Committee and the costs should be carefully discussed at HTW.

15 It is considered that the suggested new output will not lead to any additional administrative requirements or burdens because the revision will update existing requirements and there should be no increase of costs for the maritime industry.

16 In this regard, the completed administrative checklist, as set out in annex 5 to 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), is set out in annex 1.

Benefits

17 A comprehensive review of the STCW Convention and Code would have the following main advantages:

- Ensure that the STCW Convention continues to support seafarers who are competent to perform the functions required on board ships;
- Ensure that the STCW Convention continues to provide a set of globally recognised standards for training and certification of seafarers;
- Ensure that the STCW Convention is designed to respond or adapt to the pace of technological, regulatory and operational developments; and
- Ensure that the STCW Convention is structured and organised in a manner facilitating harmonised and consistent implementation.

Industry standards

18 There are no other industry provisions or standards applicable to the proposed output other than the provisions of the STCW Convention and the Code.

Output

19 The proposed title of the new output is: “Comprehensive review of the STCW Convention and STCW Code”.

20 It is anticipated that, if the Committee approves this output at this session for inclusion in the upcoming agenda of the HTW Sub-Committee (HTW 8), this could be completed in four Sub-Committee sessions.

Human element

21 The completed checklist contained in the *Checklist for considering human element issues by IMO bodies* (MSC-MEPC.7/Circ.1) is set out in annex 2.

Urgency

22 Since it is estimated that the resulting revision will not come fully into effect before a number of years until the process is completed, it is suggested that this issue be further considered by the Organization, as soon as possible and as a matter of priority. In this regard, the new output could be included in the Strategic Plan's list of outputs for the upcoming biennium, as well as in the upcoming provisional agenda for the HTW Sub-Committee, for completion in no more than four sessions.

Action required

23 The Committee is requested to consider the present submission and justification therein, and to include a new output in the Committee's post biennial agenda on the "Comprehensive Review of the STCW Convention and Code", with the HTW Sub-Committee being assigned as the coordinating body, with a view to being placed on the Sub-Committee's provisional agenda for HTW 8.

Action requested of the Committee

24 The Committee is invited to consider the information provided above and the new output suggested in paragraph 23 above, and take action, as appropriate.

Annexes to be included:

- a. ANNEX 1 - CHECKLIST FOR IDENTIFYING ADMINISTRATIVE REQUIREMENTS (MSC-MEPC.1/Circ.5/Rev.1 – Annex 5)
- b. ANNEX 2 - CHECKLIST FOR CONSIDERING HUMAN ELEMENT ISSUES BY IMO BODIES(MSC-MEPC.7/Circ.1 – ANNEX)
- c. ANNEX 3 - CHECK/MONITORING SHEET FOR THE PROCESSING OF AMENDMENTS TO SAFETY-RELATED IMO CONVENTION, OTHER THAN THE 1974 SOLAS CONVENTION, AND RELATED MANDATORY INSTRUMENTS (PROPOSAL/DEVELOPMENT) (MSC.1/Circ.1587 – ANNEX 1)