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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 18 September 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No Cion doc.: SWD(2012) 272 final

Subject: COMMISSION STAFF WORKING DOCUMENT
Paper to facilitate coordination between the EU Member States and the
Commission for the IMO Diplomatic Conference in Cape Town, South Africa,
on 9-11 October 2012, convened to consider and adopt an Agreement on the
implementation of the Torremolinos Protocol of 1993 relating to the 1977
Torremolinos Convention on the safety of fishing vessels

Delegations will find attached Commission document SWD(2012) 272 final.

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EUROPEAN COMMISSION

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Introduction

The Diplomatic Conference in Cape Town, South Africa convened to consider and adopt an Agreement on the implementation of the Torremolinos Protocol represents a major effort on the part of the IMO to facilitate the entry into force of the 1993 Protocol.

The original 1977 Torremolinos Convention, agreed by 45 countries including 9 EU Member States was not ratified as parties were unwilling to apply a stringent safety regime, copied from SOLAS, to smaller mainly coastal vessels of 24 metres in length and over. To make it more acceptable, the 1993 Protocol updated the provisions and revised the obligatory application of the main chapters to vessels of 45 metres in length and over, leaving it up to a regional decision for an application to vessels of 24 metres in length and over. The entry into force of the 1993 Protocol was dependent on ratification by at least 15 IMO State parties with a combined fleet of more than 14000 fishing vessels of 24 metres in length and over, criteria which have never yet been met.

Following the adoption of the Torremolinos Protocol in 1993, the Commission and EU Member States announced in accordance with Article 3(5) of the Protocol, which permits the development of regional arrangements, that the European Union intended to initiate, among the members of the European Economic Area, the development of the widest possible regional arrangement for vessels between 24 metres and 45 metres in length, which would be based to the largest extent possible on the provisions of the Protocol applied to vessels of 45 metres in length and over. Directive 97/70/EC is the result.

EU competence and ramifications

In accordance with the rules on external competence as laid down in Article 3 (2) Treaty on the Functioning of the European Union (TFEU)¹, the amendments to the 1993 Torremolinos Protocol come under exclusive EU competence, as the Protocol has been transposed into EU legislation by Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over.

The European Union cannot become a party to the draft Agreement, as the current draft, as approved by the IMO Maritime Safety Committee, does not include a REIO (Regional Economic Integration Organisation) clause.

It follows that, should the Diplomatic Conference result in the adoption of an Agreement amending the Torremolinos Protocol of 1993, the Member States are not in a position to

¹ As well as AETR judgment of the ECJ, case 22/70, [1971] ECR page 263.

decide autonomously on the ratification of the Agreement. They can only ratify it, in the interests of the Union, after authorization by the Council.

EU Member States' position at the Conference

Member States are reminded that, as with discussions at IMO which led up to the current draft Agreement, the EU line approved at the relevant coordination is to:

a) support the draft Agreement, ensuring that there is no further regression in terms of safety provisions. The amendments to the Protocol already provide greater flexibility in terms of progressive implementation, exemption of national fishing vessels within a coastal zone up to 200 miles, a generous conversion factor between gross tonnage and vessel length and revised survey arrangements; and

b) ensure that in no case will the implementation of EU law as it stands today be affected in a detrimental way.