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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	22 February 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2016) 43 final
Subject:	COMMISSION STAFF WORKING DOCUMENT For the Council Shipping Working party IMO – EU Information paper to be submitted to the 96th session of the Maritime Safety Committee of the IMO, London from 11 - 20 May 2016 (MSC 96) concerning information on the EU Operational Guidelines on places of refuge

Delegations will find attached document SWD(2016) 43 final.

Encl.: SWD(2016) 43 final



Brussels, 22.2.2016
SWD(2016) 43 final

COMMISSION STAFF WORKING DOCUMENT

For the Council Shipping Working party

IMO – EU Information paper to be submitted to the 96th session of the Maritime Safety Committee of the IMO, London from 11 - 20 May 2016 (MSC 96) concerning information on the EU Operational Guidelines on places of refuge

COMMISSION STAFF WORKING DOCUMENT

For the Council Shipping Working party

IMO – EU Information paper to be submitted to the 96th session of the Maritime Safety Committee of the IMO, London from 11 - 20 May 2016 (MSC 96) concerning information on the EU Operational Guidelines on places of refuge

PURPOSE

The document presented in the attachment concerns an information paper for submission to the 96th session of the Maritime Safety Committee (MSC 96) of the IMO. It sets out the progress as regards the establishment of the EU Operational Guidelines on places of refuge since MSC 95, which led the Guidelines to be finalized and agreed at a meeting of the EU Cooperation Group on Places of Refuge with the participation of industry stakeholders, on 13 November 2015. It is hereby submitted to the appropriate technical body of the Council with a view to achieving agreement on transmission of the documents to the IMO prior to the required deadline of 8 March 2016¹.

Directive (EC) 2002/59 of the European Parliament and the Council establishing a Community vessel traffic monitoring and information system ('VTMIS')², as amended by Directive (EC) 2009/17³, in Article 20(3) provides that Member States' competent authorities for the accommodation of ships in need of assistance shall meet regularly to exchange expertise and discuss the implementation of the relevant provisions. Furthermore, Article 23(d) of Directive (EC) 2002/59 provides that Member States and the Commission shall cooperate in attaining the objective of drawing up concerted plans to accommodate ships in distress. Therefore, the substance of the joint submission falls under EU exclusive competence.

¹ 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.

² OJ L 208, 5.8.2002, p. 10.

³ OJ L 131, 28.5.2009, p. 101.

ANY OTHER BUSINESS

Information on the EU Operational Guidelines on places of refuge

Submitted by the European Commission on behalf of the European Union *

SUMMARY

<i>Executive summary:</i>	This document reports on the work carried out by the Competent Authorities within the EU, together with the relevant industry associations, to develop a set of operational guidelines for the accommodation of ships in need of assistance. The operational guidelines build on the experience gained in the EU with such incidents, in particular the incident of the <i>MSC Flaminia</i> in 2012. The emphasis is placed on enhanced cooperation and information-sharing among all parties concerned. The operational guidelines were tested in 2015 and put into use in January 2016.
<i>Strategic direction:</i>	7.2
<i>High-level action:</i>	7.2.1
<i>Planned output:</i>	No related output
<i>Action to be taken:</i>	Paragraph 13
<i>Related documents:</i>	IMO Res A.949(23), LEG 101/11/4, MSC 94/20/1, CCC 1/INF.2; MSC95/INF.8

* co-sponsored by [ICS, ISU, BIMCO, INTERTANKO, International Group of Protection and Indemnity Associations (P&I Clubs), IUMI, WSC and IACS?]

Introduction

1 This document provides updated information on the work of the Competent Authorities within the European Union (EU) together with the relevant industry associations to develop a set of operational guidelines building for handling cases of ships in need of assistance requesting a place of refuge, in line with EU legislation and the IMO Guidelines on Places of Refuge in Resolution A. 949(23).

Background

2 Following recent maritime incidents involving ships in distress in waters outside the jurisdiction of any State, notably the **MSC Flaminia**, the Member States of the European Union, together with the European Commission and the European Maritime Safety Agency (EMSA), set out to review the framework for cooperation and coordination among national authorities, as well as with other parties involved in such cases, aiming to improve the existing arrangements.

3 This led to the establishment of an expert group (the 'Cooperation Group on Places of Refuge') comprising all authorities in the EU in close consultation with relevant industry associations. One of the tasks has been to develop and test the EU operational guidelines on places of refuge.

Developments since MSC95

4 The Cooperation Group has progressed with this work in the course of 2015. As outlined in MSC95/INF.8 this involved making the operational guidelines more user-friendly and easy to navigate by hyperlinking to relevant documents and by including an 'interactive' flow-chart, also functioning as a quick reference guide.

5. Furthermore, a second table top exercise (TTE) was held on 1 September 2015, hosted by Malta (the first TTE was held in Rotterdam in 2013). The exercise was held back-to-back with the MALTEX Pollution Response and Oil Recovery Drill organised by the Pollution and Incident Response Unit within Transport Malta, in coordination with EMSA, in order to test the EU operational guidelines in as close to a real situation as possible. 20 EU/EEA Member States and 8 maritime industry stakeholders participated in the exercise. An exercise evaluation report was produced, including recommendations for further adjustments and improvements of the EU operational guidelines, in particular as regards their operational use.

6. The outcome and recommendations of the TTE were discussed at a meeting of the EU Cooperation Group on Places of Refuge with the participation of industry stakeholders, on 13 November 2015, where the operational guidelines were finalised and agreed. Following some technical improvements (including a hyperlink in Appendix A of the guidelines to the contact list of Maritime Assistance Services (MAS) the IMO publishes in MSC.5/Circ.13/Rev.2) the operational guidelines were made available, on the relevant web page of the European Commission, in January 2016 (see link below).

Current Status

7 The operational guidelines, although non-mandatory in nature, support the more uniform application of the underlying EU legislation, especially for incidents involving neighbouring States or more than one State in the vicinity of the incident. Even if one State may not, after due assessment, be in a position to offer a place of refuge, the assessment process should continue in cooperation with the other State(s), who may be in a better position to offer accommodation.

8 The operational guidelines therefore address the questions of where to find and, practically, how to liaise with authorities likely to get involved, in order to ensure that information on the vessel, the incident and any potential hazard arising from the incident to the other State(s) is made available, to all parties involved, as soon as possible.

9 They aim at a robust operational process leading to well-advised and, where possible, quicker decision-making. At the same time, they should contribute to promoting positive attitudes – within Governments, port and local authorities and industry. As a matter of principle, each State involved in the operation should examine its ability to provide a place of refuge. In principle, and unless deemed unsafe, there should be "no rejection without inspection".

10 The operational guidelines has been developed in a spirit of enhanced co-operation and coordination among all parties involved, for the purposes of providing a place of refuge, in the interest of the protection of human life, maritime safety, security and the environment.

11 The operational guidelines have been made available via the following link – <http://ec.europa.eu/transport/modes/maritime/digital-services/doc/por-operational-guidelines.pdf>

12 The intention of the co-sponsors of this document is to share the final operational guidelines for information with the IMO, in particular the Maritime Safety Committee, the Marine Environment Protection Committee and the Legal Committee, as input for keeping the IMO Guidelines on Places of Refuge under review. In so doing, the co-sponsors wish to share the experience of the collaborative process and approach leading to the agreement and putting them into practice. The co-sponsors are well-aware that an incident involving a ship in need of assistance seeking a place of refuge can happen anywhere at sea and, therefore, this work and the resulting operational practice may also serve as useful inspiration for other States.

Action requested of the Committee

13 The Committee is invited to take note of the information contained in this document and of the final operational guidelines (link in paragraph 11 above).