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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	29 June 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	SWD(2018) 370 final
Subject:	COMMISSION STAFF WORKING DOCUMENT for the Council Shipping Working party IMO - Union submission to be submitted to the 100th session of the Committee on Maritime Safety (MSC 100) of the IMO in London from 3 – 7 December 2018 concerning a proposal for a new output for a revision of resolution A.949 (23) on Guidelines on places of refuge for ships in need of assistance

Delegations will find attached document SWD(2018) 370 final.

Encl.: SWD(2018) 370 final



Brussels, 29.6.2018
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COMMISSION STAFF WORKING DOCUMENT

For the Council Shipping Working party

IMO - Union submission to be submitted to the 100th session of the Committee on Maritime Safety (MSC 100) of the IMO in London from 3 – 7 December 2018 concerning a proposal for a new output for a revision of resolution A.949 (23) on Guidelines on places of refuge for ships in need of assistance

COMMISSION STAFF WORKING DOCUMENT
For the Council Shipping Working party

IMO - Union submission to be submitted to the 100th session of the Committee on Maritime Safety (MSC 100) of the IMO in London from 3 – 7 December 2018 concerning a proposal for a new output for a revision of resolution A.949 (23) on Guidelines on places of refuge for ships in need of assistance

PURPOSE

The document in Annex contains a draft Union submission to the 100th session of the Committee on Maritime Safety (MSC 100) of the IMO, taking place in London from 3 – 7 December 2018, concerning a proposal for a new output for a revision of resolution A.949 (23) on Guidelines on places of refuge for ships in need of assistance. It is hereby submitted to the appropriate technical body of the Council with a view to achieving agreement on transmission of the document to the IMO prior to the required deadline of 31 August 2018¹.

Directive (EC) 2002/59 of the European Parliament and the Council establishing a Community vessel traffic monitoring and information system ('VTMIS'), as amended by Directive (EC) 2009/17, provides in Article 20(3) 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 that Directive provides that Member States and the Commission shall cooperate in attaining the objective of drawing up concerted plans to accommodate ships in distress². The said draft Union submission therefore 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.

ANNEX

MARITIME SAFETY COMMITTEE

MSC 100/17/XX

100th session

[date] 2018

Agenda item 17

Original: ENGLISH

WORK PROGRAMME

Proposal for a new output for a revision of resolution A.949 (23) on *Guidelines on places of refuge for ships in need of assistance*

Submitted by the European Commission on behalf of the European Union

SUMMARY

Executive summary: This document proposes a new output for the Sub-Committee on Navigation, Communications and Search and Rescue (NCSR) to a revision of resolution A.949 (23) on *Guidelines on places of refuge for ships in need of assistance*. This is to ensure that the resolution remains up to date and continues to serve as an effective instrument providing a clear framework to deal with a ship in need of assistance seeking a place of refuge in a consistent and harmonized manner globally.

Strategic direction: SD 1

High-level action:

Planned output: Not applicable

Action to be taken: Paragraph 29

Related documents: Resolution A.949(23); MSC 94/20/1; MSC 95/INF.8; MSC 96/24/5; LEG 101/11/4; and CCC 1/INF.2

Introduction

1. This document is submitted in accordance with MSC-MEPC.1/Circ.5 on *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies*, taking into account Resolution A.1111(30) on the *Application of the Strategic Plan of the Organization*.
2. This document proposes a new output for a revision of the *Guidelines on places of refuge for ships in need of assistance* (resolution A.949 (23) – hereinafter “the Guidelines”) to ensure that the resolution continues to serve as an effective instrument, providing a clear framework to deal with ships in need of assistance seeking a place of refuge in a consistent and harmonized manner globally.

Background

3. Following maritime incidents involving ships in need of assistance in waters beyond national jurisdictions, notably the **MSC Flaminia**, a review of the framework for cooperation and coordination among national competent authorities in Europe was initiated, including also other parties involved in such cases, aiming to improve the existing arrangements. An established cooperation group comprising all EU Member States authorities in close consultation and participation of all concerned industry associations (representing shipowners, salvors and ports, as well as insurers), have developed operational guidelines on places of refuge (*EU Operational Guidelines on Places of Refuge* – hereinafter referred to as “operational guidelines”), using the IMO Guidelines as the main point of reference.
4. The cooperation group has progressed with this work since 2013, as also reported to the IMO (MSC 95/INF.8 and MSC 96/24/5). In particular, the operational guidelines have been tested in scenarios resembling a real situation with all parties involved, as far as possible, through table top exercises (TTE).
5. Three such TTE have been held, the latest in September 2017 in Norway (the previous ones were held in September 2015, in Malta, and in November 2013, in The Netherlands). The aim has been to test critical parts of the operational guidelines, assess them and improve or adjust as appropriate, in particular as regards their operational use. For the last two TTE, the exercises were held back-to-back with Pollution Response and Oil Recovery Drills, in order to test the operational guidelines in as close to a real situation as possible. Twenty EU/EEA Member States and eight maritime industry stakeholders participated in these exercises.
6. The operational guidelines has been developed in a spirit of enhanced cooperation and coordination among all parties involved, with the distinct purpose of providing a place of refuge, in the interest of the protection of human life, maritime safety and the environment. At this stage all involved parties consider the operational guidelines mature and ready for broader dissemination and experience sharing with other States and regions.
7. 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>
8. In 2004 the IMO Assembly adopted resolution A.949 (23) on *Guidelines on places of refuge for ships in need of assistance* and requested *the Maritime Safety Committee, the*

Marine Environment Protection Committee and the Legal Committee to keep the annexed Guidelines [to the Resolution] under review and amend them as appropriate.'

9. The resolution describes the principles and general purpose of providing a place of refuge / accommodating a ship in need of assistance; the actions required by the master and or salvors; and the actions expected by coastal States.
10. Since the entry into force of the resolution, more than 13 years ago, various organizational, operational and technological developments have taken place in a rapidly changing global maritime domain. Vessels have become bigger and more complex. There is an increasing variety of fuel sources, apart from bunker oils, which will be used for bunkers onboard e.g. LNG, LPG and hydrogen fuels. Relevant conventions have entered into force (e.g. Nairobi Convention). Experiences in handling real situations of ships in need of assistance have increased around the world, both within and beyond national jurisdiction.
11. Recognizing that an incident involving a ship in need of assistance seeking a place of refuge can happen anywhere at sea; such experience gained and the resulting operational practice may also serve to identify improvements and practices that could benefit the IMO *guidelines on places of refuge for ships in need of assistance*, in pursuit of effectiveness.

IMO's objectives

12. At its thirtieth session, the Assembly adopted resolution A.1110(30) on the *Strategic Plan for the Organization for the six-year period 2018 to 2023*. This proposal is consistent with IMO's mission to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation. These goals will be accomplished by adopting the highest practical standards of maritime safety and security, efficiency of navigation and prevention and control of pollution from ships, as well as through consideration of the related legal matters and effective implementation of IMO instruments, with a view to their universal and uniform application.

Need

13. When adopted, the resolution was an important initial step to address situations of ships in need of assistance and seek some common ground in the understanding and approach for the parties involved.
14. Whilst the overall approach remains relevant, refined principles, guidance and documentation, as well as advances in communication and training, in particular the lessons learned from several years of experience in the EU in operational circumstances have revealed significant parts of the current resolution, which could be updated, improved and made more operational, so as not to lose relevance. The resolution, while serving as initial inspiration, has not been applied and used to the extent expected, and is therefore in need of adaptation and modernisation for its more effective operational use and intended uniform application.
15. The current wording of the resolution requests a review of the Guidelines from time to time to keep them relevant and adapted for their intended purpose and improved use.
 - .1 In many parts of the world increasing traffic density, ship size and alternative demands on the use of marine space (e.g. off shore activities) reduce the available navigable waters, increase the risks to the safety and reduce efficiency of shipping.

- .2 Further evolution and application of the IMO Guidelines to effectively deal with ships in need of assistance, should be done in a spirit of enhanced cooperation 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.
16. The co-sponsors are of the opinion that a revision of the resolution is necessary to ensure that it continues to be an effective IMO instrument, with a clear and concise framework that:
- .1 provides for a uniform, robust operational process leading to well-advised and, where possible, quicker decision-making;
 - .2 is more practical and operational, given the situations and the many parties involved;
 - .3 assists Contracting Governments and Authorities, as well as involved industry, in using a process to meet their obligations under SOLAS Chapter V (Safety of Navigation) that is the same wherever such a request occurs and with established efficient flow of information and documentation;
 - .4 contributes to promoting positive attitudes, within Governments, port and local authorities and industry;
 - .5 includes, as a matter of principle, that each State involved in the operation should examine its ability to provide a place of refuge and, unless deemed unsafe, there should be "no rejection without inspection";
 - .6 responds to technological and operational changes that have occurred since the existing resolution came into effect and meets emerging needs and developments;
 - .7 ensures that the international framework for places of refuge continues to meet its objectives;
 - .8 provides harmonised format and forms for use in the process of handling, including for making PoR requests, enhancing thereby their use and effectiveness; and,
 - .9 provides up-to-date guidance on how to deal with media.
17. Key areas in the Guidelines (in Annex to the resolution) identified by the co-sponsors, which require clarification or update, include:
- .1 Places of Refuge coordination and cooperation – The current Guidelines are designed on the premise that there is one and only one coastal State involved in any given incident. Experience shows, however, that many incidents lead to situations involving a neighbouring State or States in the vicinity of the incident. Conversely, States may consider themselves as exempt from any responsibilities when the incident occurs beyond national jurisdiction.

Operational procedures for international coordination and decision-making should be provided for situations where more than one State may become involved and for incidents occurring beyond national jurisdiction.

- .2 Designation of a national competent authority - the current Guidelines mention numerous authorities that could be involved in the decision-making process: local authorities, maritime authorities, port authorities, authorities responsible for shoreside safety *"and generally all governmental authorities concerned"*. This risks leading to confusion and therefore delay in the internal handling and decision-making process.

Resolution A.950 on Maritime Assistance Services (MAS) provides for a single point of contact in the coastal State for masters and those private facilities involved in salvage operations. Depending on internal structure, MAS may or not be the relevant contact for the governmental authorities of another State. Clarity regarding the authority involved can thus enhance communication and efficient coordination and cooperation between neighbouring States. The Guidelines could therefore recommend: the designation of a national competent authority, and appropriate information given to IMO on the identity and contact of this authority, if different to MAS; inclusion of an electronic link (e.g. MSC.5/Circ.13/Rev.2).

- .3 Involved parties – the current Guidelines focus on masters and/or salvors but there are often other parties involved in support of resolving a situation e.g. Insurance (P&I and, Hull and Machinery) Classifications Societies (providing Emergency Response Services) etc. This should be fully reflected and roles and responsibilities explained.
- .4 Updating of process, communication and reporting procedures – the current Guidelines could be updated and clarified in relation to how to request a place of refuge, the risk assessment and inspection tools/needs, as well as the decision making, including how to communicate this. They, furthermore, could benefit from including a number of standardised formats and forms to be used: i.e. place of refuge request form, framework for what any 'Decision Methodolgy' could include, SITREP (Situational Reports) in uniform format, etc.
- .5 Guidance in the case of rejection and hand-over to another State - The current Guidelines are silent on any procedure and communication to concerned parties, in the case of a process leading to rejection. Such guidance should be developed and should also include procedure and information to be provided in order to hand over the handling of a ship in need of assistance to another (neighbouring/supporting) State.
- .6 Media and information handling - the current Guidelines do not cover this aspect at all, but given its role and the way social media is used today, a chapter on media handling should be considered.

- .7 Learning from experience – the Guidelines should include an encouragement for any party involved in handling ships in need of assistance to share lessons learned and report those to the organisation.
- .8 Administrative amendments – there are references to a number of applicable international conventions in its appendix 1, which is in need of updating following the entry into force of additional relevant conventions. The document would also benefit from an overall rationalization and restructuring.

Analysis of the issue

18. Noting the paragraphs 1 to 8 above, the co-sponsors are of the opinion that the practicality, feasibility and proportionality of the proposal are clear. In particular:
- Practicality – The co-sponsors note that the EU operational guidelines provide practical input, tested in table top exercises, for how to modernise the resolution and to keep it updated continuing to serve as an effective instrument providing a clear, comprehensive and concise global framework for Contracting Governments and involved Authorities as well as industry and ships. This work provides valuable input to undertake the proposed revision of the resolution [and EMSA may provide expert resources to the process].
 - Feasibility – The current resolution requests to keep the IMO Guidelines under review and amend them as appropriate. A revision is necessary and feasible given the increased expertise and experience now available. The Sub-Committee on Navigation, Communications and Search and Rescue (NCSR) is deemed capable to complete the necessary work in two sessions.
 - Proportionality – The action required would not exceed that which is necessary to achieve the overall objective of ensuring that the resolution remains an effective instrument responding to the significant global changes since the current resolution was adopted in 2004.

The purpose is not to suggest that the EU Operational Guidelines are introduced in their entirety, but to use relevant parts as input to a revision and updating of the resolution and the annexed IMO Guidelines.

Analysis of implications

19. The co-sponsors are of the opinion that there will be no additional administrative requirements or burdens and there will be no additional costs to the maritime industry as a consequence of taking this proposal forward.
20. The completed checklist for identifying administrative requirements and burdens (MSC-MEPC.1/Circ.5) is set out in annex 1.

Benefits

21. A revision of the *Guidelines on places of refuge for ships in need of assistance* will ensure that it continues to provide a modernised and effective IMO instrument with a clear and concise framework to:

- .1 assist Contracting Governments and (as the case may be) Competent Authorities to meet their obligations under SOLAS Chapter V;
- .2 ensure that the international framework for ships in need of assistance seeking a place of refuge continues to meet its objectives;
- .3 mitigate the risks associated with the use of different place of refuge procedures and a lack of consistency between place of refuge processes and plans;
- .4 ensure that further development and practical application of the Guidelines shall contribute towards mitigating risks due to increasing traffic density, including in areas where a reduction in available navigable space may occur;
- .5 facilitate the delivery, understanding, sharing of information and operational approach to places of refuge globally in a consistent and harmonized manner;
- .6 reduce the likelihood of confusion and misunderstanding between actors involved; and,
- .7 clarify and facilitate the handling of ships in need of assistance.

Furthermore, it is the opinion of the co-sponsors that a revision of the resolution will contribute to:

- .8 enhancing the effectiveness of places of refuge as a valuable contribution to risk mitigation in turn contributing to safe and secure navigation and protection of the marine environment; and,
- .9 unambiguous procedures, which are expected to ease the workload associated with the interaction between all parties involved, creating a common understanding allowing situations to be dealt with in a similar or same way, wherever they may occur; therefore contributing also to the continuous improvement of operations.

Industry standards

22. Currently no adequate industry standards exist or are envisaged to be developed. A link where to find and download the EU Operational Guidelines is provided in point 7 of this document.

Output

23. The proposed output is a revision of resolution A.949(23) for approval by the Committee and subsequent adoption by the Assembly.

24. The intended output is specifically aimed to foster and improve the safe, economic and efficient dealing with a vessel in need of assistance seeking a place of refuge as well as the protection of the marine environment.

25. The output is required for the Guidelines to fulfil their role as a proactive instrument in contributing to mitigating maritime accidents and reduced impact on the marine environment. This will be achieved by providing a clear and concise framework to implement the handling of places of refuge globally in a realistic, consistent, operational and harmonized manner.

Human element

26. The proposal focuses on achieving effective, operational Guidelines globally, that will be implemented in a harmonized manner and in a way that is consistently understood by all stakeholders. It aims to reduce stress causing confusion among national authorities and the industry involved, and to minimize the workload both ashore and on board. The proposal does not focus on detailed technical aspects for which Human Centric Design should be considered.

27. The completed checklist for considering human element issued by IMO bodies (MSC-MEPC.7/Circ.1) is set out in annex 2.

Urgency

28. The proposed output is in line with the current IMO Strategic Plan (paragraph 12 above refers to this).

Action required

29. The Committee is invited to include a revision of Resolution A.949(23) as a new output in the upcoming biennium agenda of the NCSR Sub-Committee.

ANNEX 1

<p>This checklist should be used when preparing the analysis of implications required in submissions of proposals for inclusion of outputs. For the purpose of this analysis, the term "administrative requirements" is defined in resolution A.1043(27), i.e. administrative requirements are an obligation arising from future IMO mandatory instruments to provide or retain information or data.</p> <p>Instructions:</p> <p>(A) If the answer to any of the questions below is YES, the Member State proposing an output should provide supporting details on whether the requirements are likely to involve start-up and/or ongoing costs. The Member State should also give a brief description of the requirement and, if possible, provide recommendations for further work (e.g. would it be possible to combine the activity with an existing requirement?).</p> <p>(B) If the proposal for the output does not contain such an activity, answer NR (Not required).</p> <p>(C) For any administrative requirement, full consideration should be given to electronic means of fulfilling the requirement in order to alleviate administrative burdens.</p>		
<p>1. Notification and reporting? Reporting certain events before or after the event has taken place, e.g. notification of voyage, statistical reporting for IMO Members</p>	NR	<p style="text-align: center;">Yes</p> <input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing
Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)		
<p>2. Record keeping? Keeping statutory documents up to date, e.g. records of accidents, records of cargo, records of inspections, records of education</p>	NR	<p style="text-align: center;">Yes</p> <input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing
Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)		
<p>3. Publication and documentation? Producing documents for third parties, e.g. warning signs, registration displays, publication of results of testing</p>	NR	<p style="text-align: center;">Yes</p> <input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing
Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)		
<p>4. Permits or applications? Applying for and maintaining permission to operate, e.g. certificates, classification society costs</p>	NR	<p style="text-align: center;">Yes</p> <input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing
Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)		
<p>5. Other identified requirements?</p>	NR	<p style="text-align: center;">Yes</p> <input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing
Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)		

CHECKLIST FOR IDENTIFYING ADMINISTRATIVE REQUIREMENTS

ANNEX 2

CHECKLIST FOR CONSIDERING HUMAN ELEMENT ISSUES BY IMO BODIES

<p>Instructions: If the answer to any of the questions below is:</p> <p>A. YES, the preparing body should provide supporting details and/or recommendations for further work.</p> <p>B. NO, the preparing body should make proper justification as to why human element issues were not considered.</p> <p>C. NA (Not Applicable) – the preparing body should make proper justification as to why human element issues were not considered applicable.</p>	
<p>Subject Being Assessed: (e.g. Resolution, Instrument, Circular being considered)</p> <p>Resolution A.949 (23) on Guidelines on places of refuge for ships in need of assistance</p>	
<p>Responsible Body: (e.g. Committee, Sub-Committee, Working Group, Correspondence Group, Member State)</p> <p>Sub-Committee on Navigation, Communications and Search and Rescue (NCSR)</p>	
1. Was the human element considered during development or amendment process related to this subject?	Yes
2. Has input from seafarers or their proxies been solicited?	Yes
3. Are the solutions proposed for the subject in agreement with existing instruments? (Identify instruments considered in comments section)	NA
4. Have human element solutions been made as an alternative and/or in conjunction with technical solutions?	NA
5. Has human element guidance on the application and/or implementation of the proposed solution been provided for	
• Administrations?	Yes
• Shipowners/managers?	Yes
• Seafarers?	Yes
• Surveyors?	NA
6. At some point, before final adoption, has the solution been reviewed or considered by a relevant IMO body with relevant human element expertise?	NA
7. Does the solution address safeguards to avoid single person errors?	NA
8. Does the solution address safeguards to avoid organizational errors?	NA
9. If the proposal is to be directed at seafarers, is the information in a form that can be presented to and is easily understood by the seafarer?	NA
10. Have human element experts been consulted in development of the solution?	NA
11. HUMAN ELEMENT: Has the proposal been assessed against each of the factors below?	
CREWING. The number of qualified personnel required and available to safely operate, maintain, support and provide training for system.	NA
PERSONNEL. The necessary knowledge, skills, abilities, and experience levels that are needed to properly perform job tasks.	Yes

TRAINING. The process and tools by which personnel acquire or improve the necessary knowledge, skills, and abilities to achieve desired job/task performance.	Yes
OCCUPATIONAL HEALTH AND SAFETY. The management systems, programmes, procedures, policies, training, documentation, equipment, etc. to properly manage risks.	NA
WORKING ENVIRONMENT. Conditions that are necessary to sustain the safety, health, and comfort of those on working on board, such as noise, vibration, lighting, climate, and other factors that affect crew endurance, fatigue, alertness and morale.	NA
HUMAN SURVIVABILITY. System features that reduce the risk of illness, injury, or death in a catastrophic event such as fire, explosion, spill, collision, flooding, or intentional attack. The assessment should consider desired human performance in emergency situations for detection, response, evacuation, survival and rescue and the interface with emergency procedures, systems, facilities and equipment.	NA [yes}
HUMAN FACTORS ENGINEERING. Human-system interface to be consistent with the physical, cognitive, and sensory abilities of the user population.	NA
Comments: Comments: (1) Justification if answers are NO or Not Applicable. (2) Recommendations for additional human element assessment needed. (3) Key risk management strategies employed. (4) Other comments. (5) Supporting documentation.	