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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2024) 73 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Union submission to the International Maritime Organization's 108th Maritime Safety Committee commenting on the report of the 10th session of the Sub-Committee on Human Element, Training and Watchkeeping (HTW)

Delegations will find attached document SWD(2024) 73 final.

Encl.: SWD(2024) 73 final



Brussels, 19.3.2024
SWD(2024) 73 final

COMMISSION STAFF WORKING DOCUMENT

Union submission to the International Maritime Organization's 108th Maritime Safety Committee commenting on the report of the 10th session of the Sub-Committee on Human Element, Training and Watchkeeping (HTW)

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PURPOSE

This Staff Working Document contains a draft Union submission to the International Maritime Organization's (IMO) 108th Maritime Safety Committee (MSC 108). The IMO has scheduled MSC 108 from 15 to 24 May 2024.

The draft submission provides comments to the report of the 10th session of the Sub-Committee on Human Element, Training and Watchkeeping (HTW) and highlights the negative consequences of fraudulent certificates of competency and proficiency, while requesting for measures to address them.

EU COMPETENCE

The training and certification of seafarers is regulated at international level by the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention) of the International Maritime Organization (IMO), as amended.

Directive (EU) 2022/993¹ on the minimum level of training of seafarers incorporates the STCW Convention into Union law. Article 9 requires that the Member States shall take and enforce appropriate measures to prevent fraud and other unlawful practices involving certificates and endorsements issued, and shall provide for penalties that are effective, proportionate and dissuasive. Measures to prevent fraud and penalties or disciplinary measures in cases of fraud are also referred to in Articles 10(2) and 10(3) of the Directive.

In light of all of the above, the present draft Union submission falls under EU exclusive competence, pursuant to article 3(2) TFEU.² 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 26 March 2024.

¹ OJ L 169, 27.6.2022, p. 45.

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). The present submission, however, does not produce legal effects and thus the procedure for Article 218(9) TFEU is not applied.

**HUMAN ELEMENT, TRAINING AND WATCHKEEPING (REPORT OF THE TENTH
SESSION OF THE SUB-COMMITTEE)**

Comments on document MSC 108/16/XX

**Submitted by Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia,
Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania,
Luxembourg, Malta, Netherlands (Kingdom of the), Poland, Portugal, Romania,
Slovakia, Slovenia, Spain, Sweden, and the European Commission, acting jointly in
the interest of the European Union**

SUMMARY

Executive summary: This document provides comments to the report of the 10th session of the Sub-Committee on Human Element, Training and Watchkeeping (HTW) and highlights the negative consequences of fraudulent certificates of competency and proficiency, while requesting for measures to address them.

Strategic direction, if applicable: 6 and 7

Output: 6.3.

Action to be taken: Paragraph 15

Related documents: HTW 10/INF.2 Rev.1, HTW 10/5

Background

1 The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 1978), as amended, under Regulation 5 requires that Parties take and enforce appropriate measures to prevent fraud and other unlawful practices involving certificates and endorsements.

2 Reports on unlawful practices associated with certificates of competency is a standing agenda item for the Sub-Committee on Human Element, Training and Watchkeeping (HTW). This agenda item contains member State's reports to the Secretary General of fraudulent certificates that have been detected. A comparison of reports received for the period 2022 – 2023 with previous years shows that the number of fraudulent certificates being reported is increasing year on year.

3 It is not clear from the HTW reports to the Secretary General if this is because Administrations are better at detecting and reporting fraudulent certificates than in previous years or because the number of such certificates in circulation is increasing. Detecting and reporting fraudulent certificates places a large but necessary administrative burden on member States.

4 Whilst being very informative and raising awareness of fraudulent certificates the HTW reports do not stop fraudulent certificates from being issued.

Discussion

5 Genuine seafarer certificates are issued to seafarers that have completed approved training and have been examined and found competent to perform a range of onboard tasks related to safe navigation of a ship, radiocommunications, operation and maintenance of essential machinery, maintenance and operation of lifesaving and fire-fighting appliances, ship security and prevention of pollution. Unqualified and incompetent seafarers pose an unacceptable risk to the safety of all shipping, other seafarers, security and to pollution of the marine environment.

6 The production of fraudulent certificates also causes personal loss to those seafarers who have bought fraudulent certificates. Such fraudulent certificates may be sold for over 6000USD and it is believed that many seafarers borrow this money to buy the certificates. When the certificates are shown to be fraudulent they are unable to repay the loan, often with serious consequences.

7 The production of fraudulent certificates also causes reputational damage to the Party whose certificates are being copied.

8 Certificates of competency and certificates of proficiency that have been issued fraudulently may come to light when these certificates are presented for verification under STCW Regulation I/2 for the purpose of issuing an endorsement attesting recognition under Regulation I/10 or during flag and port State inspections.

9 Efforts to stop the ongoing production of fraudulent certificates is difficult. Fraudulent certificates are produced and sold in countries outside the jurisdiction of the Party whose certificate is being copied and the bodies behind these fraudulent certificates may reside in a different country than the country where the certificate is sold. The copies, in many cases, are very plausible and contain live, but fraudulent, on-line verification links.

10 Websites for buying and verifying fraudulent certificates are difficult to track down and to have them closed or removed. The hosting servers may be located anywhere in the world, with the ownership of the servers held in another country. Web hosting services are often not willing to disclose any information that identifies the owner of the fraudulent websites. The domain names of the websites are masked by using a third-party service and, in some cases, the fraudsters copy and clone genuine email addresses of the issuing Administration and mask them making it appear that correspondence is coming from official email addresses of the Administration.

11 It is believed that this problem is widespread and underreported.

12 Administrations should not underestimate the importance of conducting verification checks of seafarer documentation before issuing endorsements attesting recognition and fraudulent certificates should also be reported to the Party whose certificates have been fraudulently issued or copied.

13 In complying with Regulation I/5 a Party may apply national legislation to ships flying its flag and to seafarers duly certificated by that Party. A Party within whose jurisdiction there has been non-compliance shall extend co-operation to any Party which advises it of its intention to initiate proceedings under its jurisdiction.

14 It is not clear under what legal framework a Party may initiate criminal proceedings for a crime that has been committed in another Party. It is also not clear under what legal basis

a Party may take criminal proceedings against a company or person that is producing fraudulent certificates in its jurisdiction that are the certificates of another Party.

Action required of the Committee

15 The Committee is invited to consider the comments above and to consider taking action in the following manner:

- .1 Instruct HTW to take into consideration during the review of the STCW Convention and Code measures to increase awareness, detection and prosecution of fraudulent activities concerning certificates, based on the preliminary areas to be reviewed as agreed in HTW 10.
- .2 Instruct HTW to take into consideration during the review of the STCW Convention and Code measures to increase cooperation between Parties about the detection and prosecution of fraudulent activities concerning certificates.
- .3 Request the Legal committee to discuss measures to improve co-operation between Parties to detect, prevent and prosecute bodies responsible for selling and/or issuing fraudulent certificates. Such measures may include increased awareness and co-operation between national law enforcement agencies.
- .4 Discuss and propose measures to increase sharing of information on fraudulent certificates between member states to help in the detection and prosecution of fraudsters.
- .5 Request HTW to include in the STCW GISIS Module a reporting possibility of fraudulent activities concerning seafarer certificates and start an information exchange between the GISIS module for fraudulent certificates and with Port State Control MoUs in order for port State control inspectors to be aware of fraudulent certificates and detect these.