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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
No. Cion doc.:	ST 7473/21
No. prev. doc.:	ST 7758/21
Subject:	Draft submission by Member States and the Commission to the International Maritime Organization's seventh session of the Sub-Committee on the Implementation of IMO Instruments on a review of the Model Agreement for the authorisation of recognised organisations acting on behalf of the Administration – <i>Endorsement</i>

INTRODUCTION

1. On 30 March 2021, the Commission transmitted to the Council a Staff Working Document containing a draft submission to the 7th session of the Sub-Committee on the Implementation of IMO Instruments (III 7) of the International Maritime Organization (IMO) concerning the review of the draft Model Agreement for the authorization of recognized organizations acting on behalf of the Administration. The deadline for transmitting the draft submission to the IMO Secretariat is 7 May 2021.

2. The purpose of the draft submission is to achieve an alignment between a paragraph in the draft Model Agreement and a corresponding paragraph in the IMO Code for Recognized Organizations (RO Code), in order to clarify the responsibilities of recognised organisations and thus enhancing maritime safety. It should be noted that some third states and one non-governmental international organisation have expressed interest in co-sponsoring the submission¹.

WORK WITHIN THE COUNCIL

3. The draft submission was examined by the members of the Shipping Working Party at their informal videoconferences on 12 and 19 April 2021. At that last meeting, consensus was reached on the substance of the draft submission. It was also agreed that the Presidency would be allowed to indicate at the time of transmission that the document may be released to the public by the IMO secretariat prior to III 7. Finally, the working party members agreed to allow interested third states and international non-governmental organisations, as appropriate, to co-sponsor the submission.
4. However, there is no agreement on who should submit the draft submission. The Commission maintains the view that the draft submission should be made by "the European Commission on behalf of the European Union", while the Member States consider that it should be made by the Member States and the European Commission.
5. Given the urgency and importance of the matter, it was agreed at working party level to propose to transmit the submission in the name of the Member States and the European Commission, while taking good note of the position of the Commission.

¹ Norway, the Russian Federation and United Arab Emirates as well as the International Association of Classification Societies (IACS).

CONCLUSION

6. In the light of the above, the Permanent Representatives Committee is invited to
- endorse the text of the draft submission in the annex, with a view to its transmission by the Presidency to the International Maritime Organization by 7 May 2021.
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SUB-COMMITTEE ON IMPLEMENTATION
OF IMO INSTRUMENTS
7th session
Agenda item 15

III 7/15/XX
XX April 2021
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REVIEW THE MODEL AGREEMENT FOR THE AUTHORISATION OF RECOGNISED ORGANISATIONS ACTING ON BEHALF OF THE ADMINISTRATION

Proposal on paragraph 6.5.5 of the draft Model agreement for the authorization of recognized organizations acting on behalf of the Administration

Submitted by Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the European Commission²

SUMMARY

Executive summary: This paper provides an assessment of paragraph 6.5.5 of the draft model agreement (III 6/15, annex 8) with paragraph 5.3.2.4 of the recommendatory part III of the RO Code, and proposes amendments to paragraph 6.5.5 of the draft model agreement to achieve alignment with paragraph 5.3.2.4 of the recommendatory Part III of the RO Code.

Strategic direction, if applicable: 1

Output: 1.35

Action to be taken: Paragraph 7

Related documents: III 6/15 (annex 8); MSC 102/14/1; MSC 102/24 (paragraph 14.8)

Background

1 The Committee, at its 102nd session, considered the draft MSC-MEPC.5 circular on model agreement for the authorization of recognized organizations acting on behalf of the Administration (III 6/15, annex 8) together with paper MSC 102/14/1 (Norway et al.), proposing either the deletion of, or amendments to, paragraph 6.5.5 of the draft model agreement.

² Possible additional co-sponsors to be added: Norway, the Russian Federation, United Arab Emirates, IACS.

2 After extensive debate, and noting that views on the matter were almost evenly divided, the Committee instructed III 7 to further consider only the text of paragraph 6.5.5. It requested III 7 take into account the amended text proposed in paragraph 10 of document MSC 102/14/1 and in this context to also consider paragraph 5.3.2.4 of the recommendatory part III of the RO Code, with a view to advising the Committees on whether the text of both paragraphs should be aligned.

Discussion

3 In offering its advice to the Committee on the alignment of the two paragraphs referred to in paragraph 2 above, the co-sponsors consider it important to read paragraph 5.3.2.4 of part III of the RO Code in its full context (i.e. including the chapeau):

"5.3 The flag State should establish a system to ensure the adequacy of statutory certification and services provided. Such a system should, inter alia, include the following items:

...

.2 procedures for reporting to the flag State by the RO and the processing of such reports by the flag State. The following reporting requirements should be considered:

...

.4 the RO should inform the flag State, as soon as possible, of any dangerous occurrences, accidents, machinery or structural breakdowns, or failures that they are aware of on a ship;..."

4 Paragraph 6.5.5 of the draft model agreement reads:

"6.5 Other reporting:

...

.5 the RO shall inform the Administration, as soon as possible, of any dangerous occurrences, accidents, machinery or structural breakdowns, or failures that they are aware of on a ship;"

5 Comparing the text referenced in paragraphs 3 and 4 above, the co-sponsors consider that "dangerous occurrences" and "accidents" in paragraph 5.3.2.4 of part III of the RO Code are with respect to the "statutory certification and services" provided by the RO on behalf of the flag State; whereas the same "dangerous occurrences" and "accidents" in paragraph 6.5.5 of the draft model agreement are undefined and go beyond the scope of responsibilities of RO's relating to "statutory certification and services" as laid out in paragraph 5.3.2.4 of part III of the RO Code.

Proposal

6 While paragraph 10 of paper MSC 102/14/1 proposed a clarification that linked "dangerous occurrences" and "accidents" with incidents that required "immediate repair or repair by a given due date", the co-sponsors consider that in order to fully align paragraph 6.5.5 of the draft model agreement with paragraph 5.3.2.4 of part III of the RO Code, paragraph 6.5.5 of the draft model agreement should be revised (and clarified) to read³:

³ Tracked changes are indicated using "strikeout" for deleted text and "grey shading" to highlight all modifications and new insertions, including deleted text.

"6.5 Other reporting:

...

.5 the RO shall inform the Administration, as soon as possible, of any dangerous occurrences, accidents, machinery or structural breakdowns, or failures, which relate to the scope of statutory certification and services as defined in the RO Code, that they are aware of on a ship;"

Action requested of the Sub-Committee

7 The Sub-Committee is invited to consider the foregoing, and in particular the proposal in paragraph 6, and take action as appropriate.
