

JOINT WORKING GROUP ON THE MEMBER  
STATE AUDIT SCHEME  
6th session  
Agenda item 2

JWGMSA 6/2  
16 January 2013  
ENGLISH ONLY

## DECISIONS OF IMO BODIES

### Outcome of C 108 and C 109, MSC 90 and MSC 91, MEPC 64 and STW 43

#### Note by the Secretariat

#### SUMMARY

*Executive summary:* This document provides information on the outcome of C 108 and C 109, MSC 90 and MSC 91, MEPC 64 and STW 43, on matters related to the work of the Joint Working Group

*Strategic direction:* 2

*High-level action:* 2.0.2

*Planned output:* 2.0.2.1

*Action to be taken:* Paragraph 25

*Related documents:* C 108/D, C 108/SR.3; C 109/D, C 109/5/2; MSC 90/28; MSC 91/22; MEPC 64/23 and STW 43/14

#### Outcome of STW 43

##### *Making the III Code and auditing mandatory*

1 The forty-third session of the Sub-Committee on Standards of Training and Watchkeeping (STW 43) was held from 30 April to 4 May 2012, and its report has been circulated as document STW 43/14. STW 43 noted the information provided by the Secretariat (STW 43/13/2) relating to the instruction of MSC 88 for it to consider how the STCW Convention could be amended to make the IMO Instruments Implementation Code (III Code) and auditing mandatory, together with any amendment to appendix 1 of part I of the annex to resolution A.974(24) on *Framework and Procedures for the Voluntary IMO Member State Audit Scheme*.

2 After the detailed discussion of the issue, views were expressed that the provisions of regulations I/7 and I/8 of STCW Convention could not pre-empt inclusion of a mandatory audit scheme from the Convention and that the "White List" process and the proposed mandatory audit scheme were complementary and could run concurrently amongst others. Following the discussion, STW 43 endorsed, in principle, subject to further improvements by Member Governments at MSC 91, draft amendments to the STCW Convention and Code to include provisions for the implementation of the III Code and the conduct of audit under

a mandatory audit scheme, as set out in annexes 13 and 14 of document STW 43/14, and invited MSC 91 to approve them.

### **Outcome of MSC 90**

#### *Confidentiality in the context of a mandatory scheme*

3 The ninetieth session of the Maritime Safety Committee (MSC 90) was held from 16 to 25 May 2012, and its report has been circulated as document MSC 90/28. MSC 90 considered the outcome of JWGMSA 5 (MSC 90/22/3), on the issue of confidentiality and the reporting format, particularly on whether its role or those of Member States that are Parties to the 1974 SOLAS Convention and its 1988 Protocol, the 1966 Load Lines Convention and the 1988 LL Protocol, the 1969 Tonnage Convention, COLREG 1972, the STCW Convention, would be affected with respect to the application of the provisions of those instruments by the disclosure of:

- .1 audit results, in the form as provided for in the executive summary report; and
- .2 Member State's comments on the progress of implementation of its corrective action plan.

4 During the discussion at MSC 90 on the issue of confidentiality, a general need for transparency was supported by a number of delegations, whilst other delegations expressed some concerns. A number of delegations, in highlighting the core objectives of the audit scheme, both in its current voluntary form and a future mandatory scheme, in particular, the fundamental need to further assist Member States to improve their capabilities and overall performance in the implementation of the mandatory IMO instruments through the provision of technical assistance, whilst at the same time providing valuable input to the regulatory function of the Organization, expressed the view that the availability of audit reports could also foster the achievement of the aforementioned objectives. Several delegations also emphasized that the sovereignty of Member States and any differences in national practices should be respected.

5 In addressing the questions posed to MSC 90 on the release of the executive summary report and a Member State's comments on the progress of implementation of its corrective action plan, the Committee agreed, by a slight majority, that the release of the executive summary report, in the form attached to document MSC 90/22/3, and the related Member State's comments thereon, would have no negative impact on its role or that of a Member State as a Party to the instruments concerned. It also acknowledged that the release of the report and comments could positively impact the work of the Committee, particularly in its review of the implementation of instruments and the regulatory work of the Organization.

### **Outcome of C 108**

6 The 108th session of the Council (C 108) was held from 11 to 14 June 2012. Its summary record of interest to the JWG has been circulated under symbol C 108/SR.3 and the summary of decisions under symbol C 108/D. Decisions taken and comments made by C 108 on the further development of the Audit Scheme are summarized in the ensuing paragraphs.

7 C 108 had, for its consideration, documents C 108/6 (Secretariat) and C 108/6/1 (Secretariat). With regard to document C 108/6/1, reporting on the outcome of the fifth session of the JWG, which was held from 2 to 4 April 2012, C 108 noted the progress made in the revision of the Framework and Procedures for the Scheme, the need to decide, no later than at its 109th session, on the issue of confidentiality in the context of a mandatory scheme, taking into account the outcome of MSC 90 and MEPC 64's consideration of the issue of confidentiality in the context of those instruments under their purview. C 108 approved the set of principles to be followed by the Secretary-General when considering the audit schedule, which should be developed by mid-2013, and noted that the availability of auditors under a mandatory scheme would be an issue and requested the Secretariat to take action as recommended by the JWGMSA 5.

8 C 108 approved the holding of the JWG meeting in 2013, under the existing terms of reference, which is annexed to Circular letter No.3300 of 24 July 2012.

### **Outcome of MEPC 64**

#### *Confidentiality in the context of a mandatory scheme*

9 The sixty-fourth session of the Marine Environment Protection Committee (MEPC 64) was held from 1 to 5 October 2012, and its report has been circulated as document MEPC 64/23. MEPC 64 considered the outcome of JWGMSA 5 (MEPC 64/12), on the issue of confidentiality and the reporting format, in the context of the potential impact of the disclosure of audit results (executive summary report and Member State's comments) on its role or those of Member States that are Parties to MARPOL.

10 MEPC 64, in its consideration of the issue, concurred with the views of MSC 90 and agreed that the release of the executive summary report, in the form attached to document MEPC 64/12, and the related Member State's comments thereon, would have no negative impact on its role or that of a Member State as Party to the instrument concerned.

#### *Making the III Code and auditing mandatory*

11 MEPC 64 recalled that MEPC 62 and MSC 89 had approved the draft III Code, as set out in annex 26 to document MSC 89/25, for submission to A 28 for adoption. The Committee endorsed FSI 20's view that, although the III Code is intended to become mandatory at the adoption stage, it would be non-mandatory until it is made mandatory by the relevant IMO instruments, and that the version of the III Code, as approved by MSC 89 and MEPC 62, which contains both provisions in mandatory terms and provisions of a recommendatory nature, needs to be redrafted in non-mandatory form. Therefore, MEPC 64 approved the draft III Code, with the associated draft Assembly resolution, as redrafted by FSI 20 and which is set out in annex 19 to document MEPC 64/23, for submission to A 28 for adoption, subject to the concurrent decision of MSC 91.

12 The Committee endorsed FSI 20's recommendation that amendments to the relevant instruments should be adopted after the III Code has been adopted by the Assembly, and that the preferred method of referencing would be to incorporate the symbol of the Assembly resolution adopting the III Code into the text of the amendments to the mandatory instruments. This text of the amendment would neither include the standard words "as amended" nor mention the article of the instrument concerned regarding the use of the tacit acceptance procedure for amending the Code. Using this method, the resolution reference alone could, in future, be replaced and updated using the article-based tacit acceptance procedure.

13 MEPC 64 noted that FSI 20, having reviewed various scenarios proposed in document FSI 20/12 for making the III Code mandatory, had agreed, in general, that the normal amendment procedures currently exercised by the Committees should be pursued, i.e. introducing amendments to IMO instruments through the article-based tacit acceptance procedure, on the basis of the normal sequence of events and meetings of the MSC and the MEPC. In this context, the Committee noted the information contained in document MEPC 64/11/3/Add.1 concerning a possible time frame to make the draft III Code and auditing mandatory and agreed to coordinate the entry-into-force dates of amendments to relevant IMO instruments to that effect.

14 The Committee approved draft amendments to MARPOL Annexes I, II, III, IV, V and VI to make the III Code and auditing mandatory, which is set out in annex 20 to document MEPC 64/23, with a view to adoption at MEPC 66, after the adoption of the III Code at A 28.

15 The Committee endorsed FSI 20's recommendation that, in the future, once a new III Code is adopted by the Assembly, amendments to the mandatory instruments should be adopted to replace the symbol of the corresponding Assembly resolution number which had adopted the old version of the Code, with the symbol of the new Assembly resolution adopting the new version of the Code. Such amendments to all relevant mandatory instruments should then enter into force at the same time, in order to avoid having different versions of the Code in force simultaneously.

16 The Committee instructed the FSI Sub-Committee to develop, at its next session, a new non-mandatory instrument in the form of an Assembly resolution, solely containing the annexes to the current non-mandatory Code for the implementation of mandatory IMO instruments, to be reviewed in the future in the same way as the annexes to the non-mandatory Code have been updated regularly, since its initial adoption.

### **Outcome of C 109**

17 The 109th session of the Council (C 109) was held from 5 to 9 November 2012, and its summary of decisions has been circulated under symbol C 109/D. C 109 had, for its consideration, documents C 109/5, C 109/5/1 and C 109/5/2, prepared by the Secretariat. With regard to document C 109/5/2, providing the background on the issue of confidentiality in the context of a mandatory audit scheme, and the outcome of consideration of the issue by the MSC and MEPC, C 109 decided that the release of the executive summary report and the Member State's comments on the implementation of its corrective action plan to the public or Member States should be subject to the authorization of the Member State concerned prior to the audit. The Council also agreed to keep this aspect of the mandatory scheme under review.

18 With respect to the development of the scheme, C 109 requested the JWG to consider the financial implications associated with the implementation of the mandatory scheme, in particular, in respect of the conduct of audits.

### **Outcome of MSC 91**

#### *Making the III Code and auditing mandatory*

19 The ninety first session of the Maritime Safety Committee (MSC 91) was held from 26 to 30 November 2012, and its report has been circulated as document MSC 91/22. MSC 91, noting the concurrent decision of MEPC 64, approved the draft III Code, with the associated draft Assembly resolution, as set out in annex 16 to document MSC 91/22, for submission to A 28 for adoption.

20 The Committee also concurred with the decision of MEPC 64, in endorsing the FSI 20's recommendation, that amendments to the relevant instruments should be adopted after the III Code has been first adopted by the Assembly and that the preferred method of referencing would be to incorporate the symbol of the Assembly resolution adopting the III Code into the text of the amendments to the mandatory instruments (see paragraph 12).

21 Having endorsed FSI 20's recommendation that both the explicit acceptance procedure and the unanimous acceptance procedure might be initiated concurrently for acceptance of amendments to LL 66 and Tonnage 1969 and that both of the above-mentioned procedures should be used for the purpose of amending LL 66 and Tonnage 1969 by the MSC and the Assembly, the Committee considered the draft amendments to LL 66, Tonnage 1969 and COLREG 1972 along with the associated draft Assembly resolutions and, after their finalization at the session, adopted the amendments for submission to A 28 for adoption.

22 To make the III Code and auditing mandatory, the Committee approved draft amendments to SOLAS 1974, as amended, LL 66 and 1988 LL Protocol, along with the associated draft MSC resolutions, which are set out in annexes 17 and 18 to document MSC 91/22, for circulation in accordance with the relevant articles of the aforementioned Conventions, with a view to adoption at MSC 93.

23 The Committee also concurred with the decisions of MEPC 64 related to the future amendments to the III Code (see paragraph 15) and a new non-mandatory instrument in the form of a draft Assembly resolution, solely containing the annexes to the current non-mandatory Code for the implementation of mandatory IMO instruments (see paragraph 16), and instructed the FSI Sub-Committee to develop the latter.

24 The Committee considered submissions MSC 91/11/4 (Islamic Republic of Iran) and MSC 91/11/5 (United States), proposing amendments to the draft amendments to the STCW Convention and Code, which were developed by STW 43 to make the III Code and auditing mandatory. As the majority of delegations did not support the proposals contained in document MSC 91/11/4, the Committee, while noting the substantive nature of the proposals in document MSC 91/11/5 and taking into account that amendments to the Convention would only be adopted by the Committee in 2014, referred the proposals in document MSC 91/11/5 along with the draft amendments to STW 44 for consideration, with a view to MSC 92 approving the outcome therefrom and adoption of the amendments by MSC 93 in 2014.

#### **Action requested of the Working Group**

25 The JWG is invited to note the information contained in this document and take action as appropriate.

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