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EXTERNAL RELATIONS

(a) Relations with the United Nations and the specialized agencies

Implications of the EU General Data Protection Regulation and Directive on the Organizations of the United Nations System

Note by the Secretary-General

SUMMARY

<i>Executive summary:</i>	This document informs the Council regarding the contents of the EU General Data Protection Regulation and Directive and the implications of the regulations on the United Nations System, including IMO
<i>Strategic direction, if applicable:</i>	Not applicable
<i>Output:</i>	Not applicable
<i>Action to be taken:</i>	Paragraph 8
<i>Related documents:</i>	None

Introduction

1 The European Union (EU) Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, General Data Protection Regulation ("the GDPR") and the accompanying Directive 2016/680 ("the Directive") apply within the EU as of 25 May 2018. The GDPR and the Directive seek to protect fundamental rights and freedoms of natural persons relating to the collection and processing of their personal data, and to allow for the free movement of personal data within the EU.

Content of the General Data Protection Regulation and Directive

2 The GDPR is aimed at giving individuals better control over their personal data through establishing a set of rules on data protection in the EU. There is no distinction between personal data about an individual in their private, public or work roles, the GDPR covers all such data. Companies and organizations in charge of personal data will have to implement

appropriate technical and organizational measures in relation to the nature, scope, context and purposes of handling and processing of such data. Organizations outside of the EU are subject to GDPR when they collect data concerning any EU citizen.

3 The GDPR restricts the transfer of personal data outside the EU to third countries or international organizations. Chapter V of the GDPR and Chapter V of the Directive allow transfers of personal data between international organizations or an international organization and third countries only under certain circumstances, specifically where:

- .1 the European Commission decides that a third country or an international organization ensures an adequate level of protection;
- .2 the European Commission or the supervisory authorities of the EU Member States approve appropriate safeguards applied by international organizations; or
- .3 there are derogations.

4 The United Nations and its Organizations are not obliged to comply with the GDPR and the Directive by virtue of Articles 104 and 105 of the United Nations Charter, the Convention on the Privileges and Immunities of the United Nations, the Convention on the Privileges and Immunities of the Specialized Agencies, and the Convention on the International Maritime Organization, which grant specific privileges and immunities to the United Nations System Organizations. However, all contractors and other organizations working with the United Nations that are located within the EU must adhere to the GDPR and the Directive.

View of the United Nations regarding the GDPR and the Directive

5 In the lead-up to the entry into force of the GDPR, the Secretariats in the UN System, primarily through the Network of United Nations Legal Advisers, began coordinating a response to the GDPR. In view of the potential conflict between the GDPR and the privileges and immunities of the United Nations and its specialized agencies described above, the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, Mr. Miguel de Serpa Soares ("the UN Legal Counsel"), prepared a letter to the European Commission regarding the perspective of the United Nations on the GDPR and the Directive. In this letter, which is presented in the annex to this document, the United Nations Legal Counsel expressed the position of the United Nations. In particular, the United Nations:

- .1 supports the aims of the GDPR and of the Directive, in principle, as these aims are consistent with international human rights law on the protection of the right to privacy of individuals. The goals are also in accordance with Articles 55 and 57 of the Charter of the United Nations, mandating the Organizations of the United Nations system to promote universal respect for, and observance of, human rights and freedoms for all without distinction as to race, sex, language, or religion.
- .2 enjoys privileges and immunities under Articles 104 and 105 of the United Nations Charter so as to allow for the independent exercise of its functions and fulfilment of its purposes. Further, under Article 100 of the United Nations Charter, United Nations staff members, in the performance of their duties, may not seek or receive instructions from any government or from any other authority external to the United Nations.

- .3 understands that chapter V of the GDPR and chapter V of the Directive provide that transfers from international organizations to other international organizations or to States would be subjected to the limitations of the GDPR and the Directive.
- .4 notes that the avenues available to transfer personal data under Chapter V of the GDPR and chapter V of the Directive do not consider the independence, privileges and immunities of the Organizations of the United Nations system, as the current options would place either the European Commission or the national supervisory authorities in the role of having to approve the transfer of personal data from one international organization to another international organization or State.
- .5 believes this requirement and the involvement of the European Commission or the national supervisory authorities would be inconsistent with the Charter of the United Nations.
- .6 emphasizes that the Organizations of the United Nations system are not subject to the provisions of the GDPR and the Directive (or other domestic and regional data protection frameworks).
- .7 is nevertheless willing to cooperate with the European Union to support the goal of protecting the personal data of individuals whose information is maintained by the Organizations of the United Nations system in order to carry out their mandated activities consistent with their respective internal legal frameworks.
- .8 requests that the EU and the United Nations begin discussions in order to seek to address the challenges posed by the provisions of the GDPR and the Directive concerning the Organizations of the United Nations system.

6 The IMO Secretariat's Information Security Manual of July 2015 is supported by several additional policies for data protection, including the Information Classification, Labelling and Handling Policy of October 2015, the Access Control Policy of March 2017 and the Computer Use Policy of September 2015. In addition, the Secretariat is developing further privacy policies consistent with United Nations views on the protection of the right to privacy as described in paragraph 5.1. The terms of use and privacy policies will replace existing ones on all web services provided by the Secretariat under the imo.org domain, in due course.

7 The Secretary-General will keep the Council updated on the outcome of the discussions described in paragraph 5.8, and on any further developments.

Action requested of the Council

8 The Council is invited to note the information provided and comment as it may deem appropriate.

ANNEX

LETTER FROM THE UNITED NATIONS LEGAL COUNSEL



POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N Y 10017
TELEPHONE 1 (212) 963 1234, TELEFACSIMILE 1 (212) 963 4679

REFERENCE

29 May 2018

Excellency,

On behalf of the Legal Advisors of the United Nations, including its Funds, Programmes and other subsidiary organs, as well as the Specialized Agencies and related organizations of the United Nations System (collectively the “Organizations of the UN System”), I have the honor to draw your attention to issues raised by the entry into effect of “*Regulation (EU) 2016/679, General Data Protection Regulation*” (hereinafter referred to as “GDPR”),¹ and also by “*Directive 2016/680*” (hereinafter referred to as “the Directive”) ”

The Organizations of the UN System understand that the GDPR and the Directive have been promulgated by the European Union (“EU”) in order to protect the fundamental rights of natural persons relating to the processing of their personal data and ensure the free flow of personal data among EU Member States. We consider that these aims are consistent with international human rights law on the protection of the right to privacy of individuals.

In accordance with Articles 55 and 57 of the Charter of the United Nations (the “United Nations Charter”), the Organizations of the UN System are mandated to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Therefore, the Organizations of the UN System, in principle, are supportive of the aims of the GDPR and of the Directive, inasmuch as they aim to ensure the protection of the privacy and personal data of persons.

As you are also aware, pursuant to Articles 104 and 105 of the United Nations Charter, the United Nations enjoys such legal capacity and such privileges and immunities in the territory of each of its Member States so as to allow for the independent exercise of its functions and fulfilment of its purposes. The Convention on the Privileges and Immunities of the United Nations, 1 UNTS 15 (1946) (the “General Convention”), elaborates on the legal status and privileges and immunities of the United Nations. I note that all EU Member States are States Parties to both the United Nations Charter and the General Convention (*see* Annex I). In addition, under Article 100 of the United Nations Charter, in the performance of their duties, United Nations staff members may not seek or receive instructions from any government or from any other authority external to the United Nations.

Similar provisions are enshrined in the legal frameworks of the separately constituted Organizations of the UN System, including in their respective constitutive instruments, as well as in the Convention on the Privileges and Immunities of the Specialized Agencies, 33 UNTS 261 (1949) (*see* Annex II), and separate treaties on privileges and immunities (*see* Annex III).

His Excellency
Mr. João Pedro Vale de Almeida
Head of Delegation of the European Union
to the United Nations
New York



As the GDPR and the Directive have now become effective, we wish to ensure that the GDPR or the Directive will not present any challenges to the Organizations of the UN System by individuals or entities, including private entities but also national bodies of EU Member States, seeking to impose the provisions of the GDPR or the Directive on the Organizations, notwithstanding their independent status and immunities from such legislation. To our knowledge, such attempts to impose the provisions of the GDPR or the Directive on the Organizations have already been made and accordingly, the Organizations of the UN System are seeking avenues of cooperation with the EU that will not compromise their independent status or privileges and immunities.

For instance, Chapter V of the GDPR and Chapter V of the Directive provide, *inter alia*, that any transfer of personal data from entities subject to the GDPR or the Directive to international organizations “shall take place only if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the [data] controller and processor (.)” Those conditions include three bases under which such personal data transfers can take place: (1) an adequacy decision to be issued by the European Commission for an international organization, (2) appropriate safeguards that need to be approved either by the European Commission or the supervisory authorities of the EU Member States and applied by international organizations, and (3) derogations. We note that these conditions do not take into account the independent status and privileges and immunities of the Organizations of the UN System, as the options provided by Chapter V of the GDPR and the Directive would place either the European Commission or the national supervisory authorities in the role of having to approve the transfer or the conditions for the execution of the data transfer. The Chapter V provisions further stipulate that onward transfers from such international organizations to other international organizations or to non- EU Member States would be subject to the provisions of the GDPR and the Directive, respectively.

I note that the wording used in both the GDPR and the Directive suggests that international organizations would have to comply with the GDPR and the Directive by seeking instructions or authorization from the European Commission or national supervisory authorities to execute their activities relating to data transfers. This would be inconsistent with the Charter of the United Nations, the General Convention and similar provisions set forth in the constitutive documents of the other separately constituted Organizations of the UN System.

Emphasizing that the Organizations of the UN System are not subject to the provisions of the GDPR and the Directive (or other domestic and regional data protection frameworks), we nevertheless wish to work with the EU as well as individual EU Member States to support the goal of protecting the personal data of individuals whose information is maintained and processed by the Organizations of the UN System in order to carry out their mandated activities consistent with their respective internal legal frameworks, such as the General Assembly resolution 68/167 of 18 December 2013 on the right to privacy in a digital age.

In light of the above, and in view of the fact that the GDPR and the Directive have now become effective, the Legal Advisors of the Organizations of the UN System have asked me to seek direct consultations with the EU on this matter. Accordingly, I propose that we begin




discussions in order to seek to address the challenges posed by the provisions of the GDPR and the Directive concerning the Organizations of the UN System

While such discussions are underway, it would be helpful if the Organizations of the UN System and the EU issue a joint declaration and guidance for the benefit of EU Member States, entities or individuals engaging with the Organizations of the UN System with respect to the handling and transfers of data. Such a joint declaration and guidance would aim to clarify the legal framework governing our respective organizations and to resolve questions regarding the non-applicability of the GDPR and the Directive to the Organizations of the UN System.

In conclusion, I trust that we can find common ground and a practical approach to this matter, and I look forward to organizing appropriate further interactions with the European Union concerning this matter.

Please accept, Excellency, the assurances of my highest consideration


Miguel de Serpa Soares
Under-Secretary-General for Legal Affairs
and United Nations Legal Counsel

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with regard to the processing of Personal Data and on the Free Movement of such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)

¹¹ Directive 2016/680 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection and Prosecution of Criminal Offences or the Execution of Criminal Penalties, and on the Free Movement of such Data, and Repealing Council Framework Decision 2008/977/JHA



Copy to:

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Mr. Jiefang Huang, Director of Legal Affairs and External Relations Bureau,
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Mr. George Politakis, Legal Adviser, International Labour Organisation
Mr. Frederick Kenney, Director, Legal Affairs and External Relations Division,
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Ms. Anna Segall, Legal Adviser, Director, Office of International Standards and
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Mr. Peter Mason, Legal Adviser, United Nations Children's Emergency Fund
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Mr. Thomas Henquet, Legal Counsel and Chief of the Legal Office, Registry,
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Mr. Johan Rautenbach, Legal Counsel, Director, Department of International Migration Law,
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Mr. Trevor Michael Rajah, Legal Adviser and Director, Office of the Legal Adviser,
Organization for the Prohibition of Chemical Weapons

Mr. Xiaodong Yang, Chief, Legal Services Section, Preparatory Commission for the
Comprehensive Nuclear-Test-Ban Treaty Organization

Mr. Yves Renouf, Legal Counsel, World Trade Organization

Annex I

EU Member States

Dates of Ratification of, Acceptance of or Accession to the UN Charter and to the General Convention

EU Member State	UN Charter Ratification, Acceptance or Accession	General Convention Ratification, Acceptance or Accession
Austria	14-Dec-1955	10-May-1957
Belgium	27-Dec-1945	25-Sep-1948
Bulgaria	14-Dec-1955	30-Sep-1960
Croatia	22-May-1992	12-Oct-1992
Cyprus	20-Sep-1960	05-Nov-1963
Czech Republic	19-Jan-1993	22-Feb-1993
Denmark	09-Oct-1945	19-Jun-1948
Estonia	17-Sep-1991	21-Oct-1991
Finland	14-Dec-1955	31-Jul-1958
France	31-Aug-1945	18-Aug-1947
Germany	18-Sep-1973	05-Nov-1980
Greece	25-Oct-1945	29-Dec-1947
Hungary	14-Dec-1955	30-Jul-1956
Ireland	14-Dec-1955	10-May-1967
Italy	14-Dec-1955	03-Feb-1958
Latvia	17-Sep-1991	21-Nov-1957
Lithuania	17-Sep-1991	17-Mar-1997
Luxembourg	17-Oct-1945	14-Feb-1949
Malta	01-Dec-1964	27-Jun-1968
Netherlands	10-Dec-1945	19-Apr-1948
Poland	24-Oct-1945	08-Jan-1948
Portugal	14-Dec-1955	14-Oct-1998
Romania	14-Dec-1955	05-Jul-1956
Slovakia	19-Jan-1993	28-May-1993
Slovenia	22-May-1992	06-Jul-1992
Spain	14-Dec-1955	31-Jul-1974
Sweden	09-Nov-1946	28-Aug-1947
United Kingdom	20-Oct-1945	17-Sep-1946

Annex II

EU Member States

**Dates of Accession or Succession to the Convention on the Privileges and Immunities of the
Specialized Agencies of the United Nations**

EU Member State	Date of Accession (a), Succession (d)
Austria	21 Jul 1950 a
Belgium	14 Mar 1962 a
Bulgaria	13 Jun 1968 a
Croatia	12 Oct 1992 d
Cyprus	6 May 1964 d
Czech Republic	22 Feb 1993 d
Denmark	25 Jan 1950 a
Estonia	8 Oct 1997 a
Finland	31 Jul 1958 a
France	2 Aug 2000 a
Germany	10 Oct 1957 a
Greece	21 Jun 1977 a
Hungary	2 Aug 1967 a
Ireland	10 May 1967 a
Italy	30 Aug 1985 a
Latvia	19 Dec 2005 a
Lithuania	10 Feb 1997 a
Luxembourg	20 Sep 1950 a
Malta	27 Jun 1968 d
Netherlands	2 Dec 1948 a
Poland	19 Jun 1969 a
Portugal	8 Nov 2012 a
Romania	15 Sep 1970 a
Slovakia	28 May 1993 d
Slovenia	6 Jul 1992 d
Spain	26 Sep 1974 a
Sweden	12 Sep 1951 a
United Kingdom	16 Aug 1949 a

Annex III

EU Member States

Dates of Ratification of or Accession to Other Treaties on Privileges and Immunities

EU Member State	IAEA Treaty	ICC Treaty
Austria	N/A	17 Dec 2003
Belgium	26 Oct 1965	28 Mar 2005
Bulgaria	17 Jun 1968	28 Jul 2006
Croatia	12 Feb 1993	17 Dec 2004
Cyprus	27 Jul 1983	18 Aug 2005
Czech Republic	27 Sep 1993	4 May 2011
Denmark	14 Mar 1962	3 Jun 2005
Estonia	12 Feb 1992	13 Sep 2004
Finland	29 Jul 1960	8 Dec 2004
France	N/A	17 Feb 2004
Germany	04 Aug 1960	2 Sep 2004
Greece	02 Nov 1970	6 Jul 2007
Hungary	14 Jul 1967	22 Mar 2006
Ireland	29 Feb 1972	20 Nov 2006
Italy	20 Jun 1985	20 Nov 2006
Latvia	05 Jan 2000	23 Dec 2004
Lithuania	28 Feb 2001	30 Dec 2004
Luxembourg	24 Mar 1972	20 Jan 2006
Malta	N/A	21 Sep 2011
Netherlands	29 Aug 1963	24 Jul 2008
Poland	24 Jul 1970	10 Feb 2009
Portugal	27 Nov 2006	3 Oct 2007
Romania	07 Oct 1970	17 Nov 2005
Slovakia	27 Sep 1993	26 May 2004
Slovenia	21 Sep 1992	23 Sep 2004
Spain	21 May 1984	24 Sep 2009
Sweden	08 Sep 1961	13 Jan 2005
United Kingdom	19 Sep 1961	25 Jan 2008