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**PERIODIC REVIEW OF ADMINISTRATIVE REQUIREMENTS IN MANDATORY IMO
INSTRUMENTS**

**Principles to be considered in the review of existing requirements and the
development of new requirements**

**Submitted by Jamaica, Liberia, Marshall Islands, Panama, the United Kingdom,
BIMCO, IACS, ICS, Intercargo and Intertanko**

SUMMARY

Executive summary: The co-sponsors welcome the recent work that Council has undertaken regarding the development of the draft Assembly resolutions on Application of the Strategic Plan and the High-Level Action Plan of the Organization and Principles to be considered when drafting IMO instruments. This document proposes further enhancements to the latter resolution with a view to facilitating the Council's further development of the Council's document on Application of the Strategic Plan and the High-level Action Plan of the Organization

Strategic direction: 4.0

High-level action: 4.0.4 and 4.0.5

Planned output: 4.0.4.1 and 4.0.5.1

Action to be taken: Paragraph 16

Related documents: C/ES.28/3/4 and C/ES.28/9

Background

1 The co-sponsors welcome the recent work that Council has undertaken in developing the draft Assembly resolution on Application of the Strategic Plan and the High-Level Action Plan of the Organization (Annex 1 to C/ES.28/3/4) and the draft Assembly resolution on Principles to be considered when drafting IMO instruments (Annex 2 to C/ES.28/9).

Introduction

2 UN Assembly Resolution A/RES/66/288 entitled ‘The future we want’ provides a “commitment to sustainable development and to ensuring the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations.” The resolution also states:

“we agree to work more closely with the major groups and other stakeholders, and encourage their active participation, as appropriate, in processes that contribute to decision-making, planning and implementation of policies and programmes for sustainable development at all levels”; and

“Sustainable transportation can enhance economic growth and improve accessibility. Sustainable transport achieves better integration of the economy while respecting the environment”.

Maintenance of the shipping’s industry economic sustainability is therefore important given its vital role in transporting about 90% of world trade, upon which the functioning of the world economy and its further development depends.

3 For over 50 years, IMO has contributed greatly to improving the shipping industry’s safety record and its environmental performance. IMO’s process of regulatory development has served the industry and society very well, providing a comprehensive regulatory framework that can be implemented and enforced worldwide.

The current situation

4 The co-sponsors note the current process the Organization employs for considering additions, or changes, to the regulatory framework is based on a proposal being submitted by at least one Member State to the appropriate IMO committee for a new output. The chairman of the appropriate committee then undertakes an assessment based upon the criteria in the committee’s guidelines on the organisation and method of work (for MSC and MEPC the current version is MSC-MEPC.1/Circ.4/Rev.4) and reports the result to the committee concerned. Thereafter, the committee makes a decision on the proposal.

5 Additionally, as per MSC-MEPC.1/Circ.4 (the relevant paragraph is reproduced below), the sub-committee subsequently tasked to undertake detailed further consideration of the output will not normally take into account compelling need, cost effectiveness and ultimate impact (including the possible economic impacts).

MSC-MEPC.1/Circ.4/Rev.4 Annex, paragraph 5.7 states:

“5.7 Subsidiary bodies should focus their efforts on carrying out the technical work entrusted to them and should not normally, without good reason, reopen discussions on the need or the compelling need for a planned or unplanned output, whether it is on their agenda or not.”

6 It is noted that some changes to the regulatory framework have a profound economic impact on the structure of the global shipping industry due to the huge operational and capital costs involved and the implementation timetable with which the global fleet will have to comply.

The way forward

7 The co-sponsors are fully committed to the successful and timely implementation of new, and amendments to existing, IMO instruments, which enhance the existing regulatory framework and facilitate “safe, secure and efficient shipping on clean oceans”.

8 The co-sponsors are also of the opinion that proposals to make changes to the regulatory framework should be taken forward on the basis of substantive evidence that a compelling need exists for such action by the IMO, when assessed against the operational, technical and economic impacts and the actual benefits delivered and what action has already been initiated within the industry to address the issue.

9 The co-sponsors believe that the IMO should have for its use an enhanced and more robust regulatory assessment process, with the aim of delivering early and effective implementation of new regulations to the benefit of all stakeholders

10 In particular, the co-sponsors believe that when regulatory changes are proposed in the future, emphasis needs to be given to full and effective regulatory impact and feasibility assessments, which take greater account of the economic and social sustainability of maritime transport.

11 Attention also needs to be given to the practicality and timescale allowed for the implementation of new regulations. This should take place in due time before new rules are adopted, not at some, perhaps significant, time after adoption.

12 It should also be clarified as to how new information that becomes available after an output has been referred from a committee to a sub-committee, that is relevant in the context of this initial assessment, should be managed. This is essential to ensure that future regulatory changes are realistically feasible from a technical perspective, supported by a substantive demonstration of compelling need and a clear understanding of the technological, operational, economic and social impacts relative to the benefits being sought.

13 The co-sponsors welcome the draft Assembly Resolution on Principles to be considered when drafting IMO instruments (annex 2 to C/ES.28/9). In particular, the co-sponsors consider the annex to this draft resolution sets out a number of useful principles that should be further pursued and in a wider context than just 'drafting' IMO instruments. For ease of reference, it is noted that the principles expounded in this draft resolution are:

- .1 regulation should be necessary;
- .2 regulation should be consistent;
- .3 regulation should be proportionate;
- .4 regulation should be fit for purpose;
- .5 regulation should be resilient; and
- .6 regulation should be clear.

Factors that might be taken into account in order to approve the regulatory process

14 In addition to the principles expounded in paragraph 13 above, the following framework is offered for consideration, with a view to achieving a good balance between economic, environmental and social issues, assuming safety and security as paramount:

Step 1 - **gathering sources of reliable data and collective experience** that could be used in the assessment of the compelling need for IMO to address an issue in its regulatory framework, including such aspects as availability, consistency and accessibility

of data; and consideration on how other industries address these issues, capture data and apply risk-based methods in developing regulations;

Step 2 - **considering whether IMO action is necessary now**, in particular when issues are uncertain and the impact of a new regulation is difficult to estimate or when it is known that other measures to address the issue have already been agreed or recently implemented in the industry that address the issue (e.g. answering the question whether action by the IMO is really needed and identifying the scale of the problem that the new regulation should solve);

Step 3 - **using cost-effectiveness and impact analyses** to estimate short-term and long-term benefits due to the implementation of the new regulation (e.g. in terms of enhancement of safety of life at sea, or protection of the marine environment) and associated costs (including potential negative consequential impacts in other areas, difficulty in practical application, legislative and administrative burdens);

Step 4 - **assessing the availability of suitable technologies** to be installed on new and/or existing ships and estimating a realistic time frame for their implementation to assess whether a system or a technology will be available to meet the objectives of a new regulation, and available from a commercially competitive market;

Step 5 - **evaluating the transparency and robustness of approval procedures for possible new equipment** to ensure compliance with both regulatory and operational requirements;

Step 6 - **considering the impact on manufacturers** to produce and deliver the required systems (e.g. whether suitable facilities are available to install these technologies and a realistic time frame for their implementation, to reach the required production volumes) with possible contributions of individual manufacturers and/or manufacturer associations;

Step 7 – **assessing the availability of clear and unambiguous criteria for surveying, inspecting and testing new technologies onboard**. The situation should be avoided when properly used and maintained type approved systems, in accordance with requirement of the new provisions, are found non-compliant when examined against the criteria of other regulatory bodies or authorities, including port State control;

Step 8 – **considering an achievable timeframe** to test and consolidate a technology before deciding on the implementation dates; and

Step 9 - **evaluating potential conflicts of benefits and detriments** between environmental, economic and social issues, assuming safety and security as paramount, by applying risk-based approaches (e.g. Formal Safety Assessment, Safety Level Approach), where needed, performance-based methods and/or other qualitative or quantitative considerations.

15 It is acknowledged that the steps as outlined above will not be applicable for every proposal for a new output, and some additional steps may be relevant in particular cases. While several of these steps are already included to some extent in the Organization's procedures, some of the suggested steps are new. It is proposed that further consideration of these steps, in particular as to how they will be robustly and consistently implemented, should be undertaken by Council with a view to further development for inclusion in the Council's document on Application of the Strategic Plan and the High-level Action Plan of the Organization, in order to deliver the overall objectives as explained in paragraphs 7 to 12 above.

Action requested of the Council

16 The Council is requested to consider and discuss the comments and proposals provided above, with a view to amending the draft Assembly resolution on Principles to be considered when drafting IMO instruments resolution presenting a Framework for Eliminating Administrative Burdens within Present and Future IMO Regulations (Annex 2 to C/ES.28/9) to:

- .1 change the title of the annex to this draft resolution to “Principles to be considered in the review of existing requirements and the development of new requirements” (taken from the introduction to the second paragraph of this annex);
 - .2 supplement the annex to this draft resolution to take account of the elements in paragraph 14 above;
 - .3 add an operative paragraph to the draft resolution inviting the Council to consider how the annex to the resolution can be implemented through the Council’s document on Application of the Strategic Plan and the High-level Action Plan of the Organization; and
 - .4 urge interested delegations to submit detailed comments and proposals in response to the invitation in paragraph 16.3 above to C116.
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