

MEMAC Circular 02/11
21/04/2011

Implementation of the Decisions taken at the 15th ROPME Council Meeting

GUIDELINES TO ADDRESS THE REGIONAL MARINE EMERGENCY RESPONSE AND SALVAGE CO-ORDINATION UNIT (MERCU) WITHIN THE NATIONAL LEGISLATION OF THE MEMBER STATES

Introduction

1. The 15th ROPME Council Meeting, which took place on 11 -12 January 2011 in Jeddah, adopted important recommendations tabled by MEMAC. The Council's approval of CM15/17 on the *Establishment of the Marine Emergency Response and Salvage Co-ordination Unit (MERCU)* marks a most important waypoint in the development of a regional marine environment and maritime safety strategy.

2. Followed by further sub-paragraphs, which will be addressed by other MEMAC Circulars, the decision CM15/17 i. and ii. reads:

Recognizing the need for an effective system for marine emergency preparedness and response as an alternative for an Emergency Fund and mindful of the number of ships entering the Region as well as the vast development in the field of the oil and gas industries which cause a tremendous increase in the risk level to the marine environment and realizing the benefit of such a unit for the Member States, the Council decides:

- i. Encourage the Member States to adopt the MERCU proposal within six months and requests MEMAC to follow up.*
 - ii. Member States to address the Marine Emergency Response and Salvage Co-ordination Unit system (MERCU) within the National Legislation.*
3. Depending on the specifics of the constitutional conditions of each individual Member State, the implementation of MERCU into national legis-

lation may vary and may include, for example, a decision taken by the Parliament, a Royal or Amiri Decree, or any other form compliant to the applicable legislative procedures.

4. This MEMAC Circular aims at providing assistance in the process and procedures in addressing MERCU within the national legislation. To this end, MEMAC has developed the attached guidelines, consisting of a drafted statement of purpose, a brief introduction to MERCU, and the criteria for the application of a contribution from the maritime industry to the safety and environmental protection infrastructures and services.

These guidelines are by no means intended to interfere with any legal procedures and/or processes carried out by the Member States but are to be solely understood as hopefully assisting comments.

5. The National Focal Points are kindly requested to inform MEMAC about the progress in addressing MERCU within the National Legislation accordingly.

GUIDELINES TO ADDRESS THE MARINE EMERGENCY RESPONSE AND SALVAGE CO-ORDINATION UNIT, MERCU, WITHIN THE NATIONAL LEGISLATION OF THE MEMBER STATES

1. Statement of Purpose

National legislation may require that each regulation and/or law includes a statement of its purpose, including:

- A detailed, plain language narrative that states the purpose of the regulation and/or law including the problems, issues or circumstances that the regulation and/or law proposes to address;
- A summary of the main provisions of the regulation and/or law; and
- The legal effects of the regulation and/or law, including all the ways that the regulation and/or law would change existing regulations or other law.

An exemplary draft of such Statement of Purpose is given below.

EXAMPLE

Regulation/Law concerning the Marine Emergency Response and Salvage Co-ordination Unit, MERCU, and the application of a contribution from the maritime industry to the safety and environmental protection infrastructures and services

(1) **Statement of purpose:** *To implement national legislation for the establishment of the Marine Emergency Response and Salvage Co-ordination Unit, MERCU, in the ROPME Sea Area in a regionally harmonized manner to avoid unwanted discrimination and distortion of competition. To co-finance the expenses for the safety and environmental protection infrastructures and services provided by the coastal State to the maritime industries in applying the user/polluter-pays-principle by means of a contribution from the maritime industry in form of a service fee.*

(2) **Problems addressed by the regulation/law:**

During the last decades the number and diversity of maritime activities have tremendously increased, confronting the Member States and the Region with significant environmental and safety problems and challenges. Due to the geographical and oceanographical formation of the ROPME Sea Area, all Member States alike are exposed to the present safety and pollution risks. The required risk reduction measures overstrain the capabilities of individual Member States and call for cooperative and regionally coordinated action as well as for cost-sharing by the beneficiaries of those measures.

(3) **Summary of the main provisions of the regulation/law:**

By implementing the ROPME Ministerial Council decision CM15/17, the regulation/law implements MERCU as a mutually agreed instrument of the ROPME Member States. The implementation of MERCU is based on international and regional conventions to reduce the risk exposure of the ROPME Sea Area by means of a precautionary approach to minimize the threat of marine pollution and to raise maritime safety. This is done by the establishment of regional Marine Emergency Response Centres, the deployment of suitable Pollution Response Vessels and the positioning of multi-purpose Emergency Towing Vessels at strategic sea positions to allow for ample coverage of the ROPME Sea Area. The regulation/law postulates a non-discriminatory, competition neutral service fee from the maritime industry to contribute to the coverage of the expenses for MERCU as part of the safety and environmental protection infrastructures and ser-

vices provided by the Member States to the maritime industry.

(4) ***Legal effects of the regulation/law on existing regulations or other laws:***

[There is no impact on existing regulations or other laws.]

2. Introduction to the Maritime Emergency Response and Salvage Co-ordination Unit

2.1. Dominated by offshore exploitation and transport of oil and gas products, the ROPME Sea Area is one of the busiest maritime areas in the world. With steadily increasing tendency up to 50,000 ships transit the Strait of Hormuz annually, of which about one third are tanker vessels. The high density of ships trafficking is demonstrated by more than 60,000 port calls at regional ports and terminals per year, resulting in severe impacts on marine ecosystems and the environment at large, and on maritime safety.

2.2. The establishment of the Marine Emergency Response and Salvage Co-ordination Unit, MERCU, in the ROPME Sea Area is a cooperative and co-ordinated regional initiative of the Member States to enhance prevention of, preparedness for, and response to marine pollution by oil and other harmful or noxious substances.

2.3. The implementation of MERCU is fully integrated into the existing structures and procedures as enforced by the Kuwait Regional Convention and its Protocol (1978)¹; it is equally footed on the related international conventions, regulations and policies of the United Nations, the UN Environment Programme and the International Maritime Organization, and on the joint efforts of the Member States to catch-up with the obligations resulting thereof.

2.4. MERCU applies the precautionary principle; its pro-active approach strengthens the national and regional endeavours aiming at the avoidance of loss of lives, marine environmental pollution and destruction of

¹ Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (1978); Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency (1978)

properties in the first place. The operational concept includes selected Maritime Emergency Response Centres, Pollution Response Vessels for shallow and deep water deployment, and multi-purpose Emergency Towing Vessels at strategic sea positions, thus covering the whole ROPME Sea Area and focusing on the most endangered hot spot areas. MERCU's operational target is to safeguard an intact ecological and economical environment by reducing the regional risk exposure to the most extent possible.

2.5. Based on the polluter/user-pays principle, MERCU applies a transparent, non-discriminatory cost-sharing-by-beneficiaries scheme by implementing a financial contribution from the maritime industry to co-finance the achievements of its targets. The contributing from the maritime industry takes into account the Member States' expenditures related to the maintenance and continuous improvement of the maritime safety and environmental protection infrastructures and services, as well as the international compensation regime in case of maritime emergencies and marine pollution.

2.6. The contribution from the maritime industry in form of a service fee is solely devoted to support the coverage of the expenditures related to the maintenance and continuous improvement of the maritime safety and environmental protection infrastructures and services in the ROPME Sea Area. The service fees form the regional fund which is administered by MEMAC according to ROPME Council decisions; the intended use of the regional fund is supervised by the Member States via the ROPME Council. The Member States preserve the right to periodically review the regional fund and to adjust the service fee depending on the performance and budgetary considerations, as appropriate.

3. Application of a contribution from the maritime industry to the safety and environmental protection infrastructures and services

3.1. The application of a contribution from the *Shipping Industry* in form of a service fee includes the following:

- i. The service fee applies to all merchant ships of 500 gross tonnes or upwards engaged in international voyages irrespective of their flags.

- ii. The service fee equals 5 US cent per 1 gross tonne to be compensated by the ship upon arrival at the first port of call (loading/unloading facility, jetty, terminal, single buoy moorings, etc.) in the ROPME Sea Area.
- iii. The service fee is valid for 30 days for all port facilities in the ROPME Sea Area from the date of collection by the ship's agent. The ship agent issues a 30 days validation certificate to the ship upon reception of the service fee.
- iv. The 30 days count whilst the ship is in trade. A ship at anchorage waiting for berth or orders is considered to be a ship in trade.
- v. The counting of the 30 days period may be interrupted in cases the ship is taken out of trade, unless the interruption of trade is caused by the fault or negligence of the ship owner and/or charterer, which, for instance, may lead to detention by Port State Control for safety and/or environmental reasons.
- vi. For ships, which are explicitly instructed in writing by the port authorities to stay at anchorage due to port limitations, congestions or other reasons given by the authorities, the days at anchorage are exempted from the 30 days counting period.
- vii. For ships, which are at a shipyard, the days at the shipyard are exempted from the 30 days counting period.
- viii. Merchant ships, which provide evidence that they are exclusively engaged in domestic trade are obliged to pay the service fee once per six months.
- ix. Ships and service vessels, which provide evidence that they are exclusively engaged in ROPME Sea Area port and terminal operations (i.e. tugs, pilot boats, dredgers, etc.) or which are at stand-by position in regional ports and terminals (e.g. search and rescue vessel; pollution combat vessel; buoy tender, etc.) are exempted from the service fee.
- x. Applications for time interruption of trade (v, vi, vii), applications on classification as ship exclusively engaged in domestic trade (viii) and

applications on classification as ship exclusively engaged in port operations (ix) are to be made with the ship's agent. Disputes will be decided by the responsible body to settle disputes according to the Kuwait Convention, Article XVI, sub-paragraph iii.

- 3.2. The application of a contribution from the oil and gas *Offshore Industry* in the ROPME Sea Area is not yet envisaged. Representing an important industry within the regional maritime sector and being aware of its vulnerability as to marine pollution and maritime safety, the regional oil and gas offshore industry may become subject to related considerations by the Member States and the ROPME Council, respectively.
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