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## MEDITERRANEAN ACTION PLAN

Meeting of the MAP Focal Points

Athens, Greece, 10-12 September 2013

### **Draft decision on the Establishment of a Mediterranean Network of Law Enforcement Officials relating to MARPOL**



### Note by the Secretariat

In 2005, at their 14<sup>th</sup> Ordinary Meeting held in Portoroz, Slovenia, the Contracting Parties have adopted the Regional Strategy for Prevention of and Response to Marine Pollution from Ships (Decision IG .16/13). The Strategy is designed as a roadmap for an effective implementation of the obligations under the 2002 Prevention and Emergency Protocol. Twenty-one specific objectives were identified with actions requested from the Contracting Parties as well as from the Secretariat. Target dates for implementation were also assigned to each specific objective.

Specific Objectives 6 and 7 of the Regional Strategy address the issue of illegal discharges from ships in violation of MARPOL Annex I regulations. Specific objective 7 calls on the Contracting Parties to, *inter alia*, ensure that they have an effective legal system in place to specifically deal with these violations, and to cooperate in exchanging information and facilitating the mutual acceptance of evidence. Under this Specific Objective the Secretariat was requested to undertake some pilot activities pertaining to compilation of national systems, and information for enforcement personnel as well as prosecutors, magistrates or penalizing authorities.

As a means to reach the aims of Specific Objective 7, the idea of a Mediterranean Network of Law Enforcement Officials relating to MARPOL, has been brought forward, based on the achievements of such networks in other Regional Seas such as the North Sea and the Baltic Sea. In February 2012, at their 17<sup>th</sup> Ordinary Meeting, the Contracting Parties adopted the Paris Declaration which reaffirms the resolution of the Contracting parties to:

*“- take all necessary measures to make the Mediterranean a clean, healthy and productive sea with conserved biodiversity and ecosystems (...)*

*By ensuring, in view of the predicted increase in maritime traffic, the continuous strengthening of capacities and resources to prevent and respond to marine pollution caused by shipping, in particular through judicial and operational cooperation”*

In June 2013, based on these two decisions, REMPEC together with Blue Plan, as implementing Agency of the GEF funded ReGoKo Project, and with the financial assistance of France, organised in Palma de Mallorca, Spain, a Meeting on the establishment of a Mediterranean Network of Law Enforcement Officials relating to MARPOL. All Contracting Parties to the Barcelona Convention were invited to nominate two representatives from the agencies/authorities in charge of investigating and sanctioning these types of offences. Thirteen Contracting Parties were represented at the Meeting. The Secretariat circulated before the Meeting draft terms of reference for the establishment of a regional network open to the participation of the Mediterranean coastal States. The Meeting discussed the terms of reference, amended them and finally approved them. The meeting noted that REMPEC could act as a secretariat to the network pending the approval of the Contracting Parties. The Meeting further recommended that, in view of the institutionalization of the network, the terms of reference should be annexed to an ad hoc decision of the Contracting Parties and requested the Secretariat to submit such a proposal for the consideration of the 18<sup>th</sup> Ordinary Meeting of the Contracting Parties scheduled to take place in Istanbul , Turkey in December 2013.

Costing estimates of the Decision (included in the proposed budget for 2014-2015):

- Baseline: a one day meeting of the designated representative a year: (travel, DSA, interpretation) 25,000 Euros (to be mobilized)
- Annual meeting plus one activity (training): 87,000 Euros (MTF as per budget 2015 under option 4)



## Draft Decision

### **Establishment of a Mediterranean Network of Law Enforcement Officials relating to MARPOL**

*The 18<sup>th</sup> Meeting of the Contracting Parties,*

*Recalling* article 6 of the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, hereinafter referred to as “the Barcelona Convention”, which refers to rules which are generally recognized at the international level relating to the control of pollution caused by discharges from ships,

*Bearing in mind* that the International Convention for the Prevention of Pollution from Ships, known as the MARPOL Convention, prohibits the release into the sea of oily substances resulting from the normal operation of ships as per its Annex I, except under certain circumstances or in compliance with specific requirements,

*Noting* that, under this particular Annex of the MARPOL Convention, as an acknowledgement of its fragile marine ecosystem, the Mediterranean Sea is declared a Special Area where stricter requirements apply in this respect,

*Stressing* that the MARPOL Convention calls for the Parties to co-operate in the identification and prosecution of illegal discharges and require that the penalties specified under the law of a Party shall be adequate in severity to discourage violations of the Convention and shall be equally severe irrespective of where the violations occur,

*Recalling also* Decision IG 16/13 regarding the adoption of the Regional Strategy for Prevention of and Response to Marine Pollution from Ships and in particular its Specific objectives 6 and 7,

*Having regard* to the Paris Declaration adopted by the Contracting Parties on the 10 February 2012, at their 17<sup>th</sup> Ordinary Meeting which *inter alia*, reaffirms the resolution of the Contracting Parties to:

*“-take all necessary measures to make the Mediterranean a clean, healthy and productive sea with conserved biodiversity and ecosystems (...)*

*By ensuring, in view of the predicted increase in maritime traffic, the continuous strengthening of capacities and resources to prevent and respond to marine pollution caused by shipping, in particular through judicial and operational cooperation”,*

*Acknowledging however* that oil slicks are regularly reported at sea, testifying that illegal discharges are taking place on a recurrent basis, thus adversely affecting the fragile marine environment of the Mediterranean Sea,

*Conscious* that in order to address this cross boundary pollution, the Contracting Parties should share their relevant experience and knowledge and, as far as possible, co-operate in the identification, investigation and prosecution of such violations,

*Recognizing* the specific nature of this particular type of environmental offences,

*Acknowledging in this regard* the proven effectiveness of dedicated networks of investigators and sanctioning authorities established under the Regional Seas framework such as the North Sea Network of investigators and Prosecutors (NSN) and the Baltic Sea Network of Environmental Crime Prosecutors (ENPRO),

**Decides** to establish a Mediterranean Network of Law Enforcement Officials relating to MARPOL;

**Approves** its terms of Reference as annexed to this decision;

**Urges** all Contracting Parties to nominate as early as possible a Designated Representative with an in-depth knowledge of this specific type of offence and to actively participate in the Network;

**Requests** REMPEC, as the relevant Regional Activity Centre of the Barcelona Convention, to act as the Secretariat of this network and to report on its activities to the Contracting Parties at each of their Ordinary Meetings;

**Invites** the MAP Secretariat to consider allocating funds for the operation and activities of the Network either directly through the Mediterranean Trust Fund (MTF) or indirectly through the mobilisation of external financial resources.

## **ANNEX**

### **TERMS OF REFERENCE OF THE MEDITERRANEAN NETWORK OF LAW ENFORCEMENT OFFICIALS RELATING TO MARPOL (MENELAS)**

1. A Mediterranean Network of Law Enforcement Officials relating to MARPOL (MENELAS) is hereby established. This Network will function as a network of individuals from the participating States supported by an electronic information system

#### **Scope of MENELAS**

2. The overall objective of MENELAS is to facilitate co-operation between its members in order to improve the enforcement of the international regulations regarding discharges at sea from ships as laid down in the MARPOL Convention.

3. This co-operation does not prejudice the rights and duties of each participating State under the said Convention or any other relevant Treaty it may be a Party to such as the United Nations Convention on the Law of the Sea.

4. MENELAS aims at improving the understanding and cooperation between its members in the different stages of the enforcement process, i.e. detection, investigation and prosecution of possible violations.

#### **MENELAS Membership and Community**

5. Usually, networking activities rely on a participatory approach and the more members do participate, the more effective the network. However, in relation with the specific goal of this network, which is restricted to enforcement agencies, it is not deemed appropriate to have as many members as possible.

6. The members of MENELAS are the Mediterranean participating States. Each State should nominate a Designated Representative (DR). Participating States should ensure that their DR has professional experience in matters related to the identification, investigation and prosecution of MARPOL related violations.

7. The DR has the responsibility to disseminate the information received through MENELAS to the concerned national competent authorities (e.g.: coast guard function, port state control, customs, jurisdictions, etc...). The DR has the responsibility to forward any request formulated within these Terms of Reference received from another MENELAS member to the appropriate entity or individual in a position to answer the query. The DR is responsible for updating the "country page" of his/her country in the MENELAS website.

8. MENELAS should also assist in exchanging information and experience with other similar regional initiatives, or other entities whose work contributes to an effective enforcement of MARPOL regulations (MoU on Port State Control) which could be invited to participate on an ad hoc basis to meetings of the Network.

9. The MENELAS community is composed of the investigators, sanctioning officials which are users of the MENELAS information system. Upon request of the relevant DR, a secured access to the MENELAS information system will be given to each user.

### **MENELAS Method of Work**

10. Due to its scope, MENELAS relies on the high responsiveness of its members and will work as an informal exchange network. It aims at facilitating co-operation between investigating bodies but not to replace the official national or international procedures which have to be strictly adhered to in order to successfully conclude violation cases. In that sense MENELAS should act as a precursor to such official requests. Bearing in mind the limited time window during which elements of evidence of a possible violation could be gathered, it is important that the highest level of reactivity is ensured through the network.

### **MENELAS Information System**

11. This reactivity should be ensured through direct access to a list of 24/7 contact points in the MENELAS participating countries. This list will be regularly disseminated to the 24/7 contact points and also be available on the restricted area of the MENELAS information system.

12. This information system will be an internet based tool comprising two main parts:

- a) a public one where general information will be made available to the public in order to raise awareness on the problem of illicit discharges from ships at sea, the aim of the network, its participating and associate members, its activities and achievements. The public part could also contain an analytic database of the legislative framework and procedural requirements in each participating country related to the prosecution of illicit discharges offenders. Statistical data should be also available.
- b) A restricted area used for participating members only, where any request for assistance could be posted. Besides this secured communication link, this area should also contain relevant information on 24/7 contact points, past cases analysis in order to highlight elements of success or failure, "tips" for investigators such as illustrations of specific techniques/ devices found during on board investigations, which could facilitate the identification of similar practices.

### **MENELAS Activities**

13. Besides the assistance directly provided to requesting members, MENELAS should assist its members by addressing their needs for training or in facilitating the adoption of harmonized procedures or documents.

14. Preferably, assistance should be provided by using the resources available within the network. For instance peer review of the legal and procedural framework in place in a requesting country could benefit not only the requesting country but also assist in familiarizing the participating countries with the legal framework in place in this country.



15. More technical ad-hoc training could be considered according to the identified needs such as for instance: reporting methodology, aerial observation and reporting of oil slicks, and investigation techniques on board a suspected ship.

16. MENELAS could also act as a facilitator for technical exchange of experience with other regional networks.

17. Finally, MENELAS could facilitate the organization of regular coordinated control operations, such as the OSCAR MED (Opération de Surveillance Coordonnée Aérienne des Rejets en Méditerranée).

### **MENELAS Governance**

18. An annual meeting of the participating countries should take place to:

- a) Review the activities of the network during the preceding year as well as national reports relevant to its field of activity;
- b) Decide on a proposed programme of activities for the following year taking into account possible national initiatives or proposals;
- c) Decide on the establishment of any working groups and their terms of reference;
- d) Consider, discuss and endorse any technical document to be used by the network prepared by the working groups;
- e) Elect a chair for a period of two years with a possibility of renewal for another term.

19. In order to support the network, REMPEC, will provide the necessary secretariat support and be responsible for the maintenance of the MENELAS information system.