

Development of common security management, maritime safety and ship pollution prevention for the Black Sea and Caspian Sea (SASEPOL)

## National Transposition Plans for MARPOL, SOLAS/ISPS, and PSC MoU's - Turkmenistan

October 2010  
European Commission



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# 1. Terms of Reference

The following text has been reproduced from the project TORs for Activity 1.2.

**Activity 1.2** *"If needed, prepare and implement a plan for transposition of above-mentioned international conventions and regulations into national legislation. ["above mentioned" = result/outcome of activity 1.1]*

*The above review shall be the basis for drafting a plan for those countries which still need transposition of international conventions into national legislation and port regulations. The plan should also address whether real compliance takes place in ports and to which extent guidelines have been prepared for staff in maritime- and ports administrations. The plan shall be drafted in close cooperation with the respective Maritime Administrations. The level of assistance with the implementation of the prepared plans will vary from country to country."*

Accordingly, the Consultant thought necessary to identify the deliverables and the methodology for the implementation of these tasks and to define the interface of this activity to other activities and tasks implemented under this project.

## 2. Methodology

The terms of reference require the following for activity 1.2:

1. Review of the outcome of activity 1.1;
2. Identification of international conventions which need transposition into national legislation;
3. If needed, drafting of a Transposition Plan.

The overall methodology for activity 1.2 has therefore been structured along the TORs and has been split into two main sections:

1. **Section 1 - Assessment:** It consists in the review and analysis of the report delivered under activity 1.1, with special emphasis on any latest developments that might have taken place since report 1.1 was delivered. It is then followed by an analysis of the number, if any, of international conventions that still require transposition into national legislation. The assessment is to be made against the IMO Code for the Implementation of Mandatory IMO Instruments, 2007. The table below summarizes the requirements and recommendations given in IMO resolution A.996(25) - Code for the Implementation of Mandatory IMO Instruments.

Table 2.1: Overview IMO Resolution 996(25)

		Description
<b>Common areas</b>		
Objective	Here each administration should view the Code for the implementation of mandatory IMO instruments and implement these instruments according to paragraph 6 to which they are Contracting Government and Parties, and also have a role in accordance with it's own circumstances and geographical position.	
Strategy	Here are issues to be covered to get the objective of the Code. According to them each member state should implement and enforce mandatory instruments in accordance to international recommendations; review and verify the effectiveness of the State's international obligations; achieve, maintain and improve organizational performance and capability.	
General	Here Administrations are responsible for promulgating laws and regulations and for taking all necessary steps to provide the whole range of effect of these instruments to ensure that a ship is fit for the service from the points of view of safety of life at the sea and protection of the marine environment by providing experienced staff and refusing to transfer damage and hazard from one area to another or transform one pollution to another.	
Scope		
Initial actions	Here the member state should incorporate new mandatory IMO instruments into national legislation and also ensure effective enforcement.	
Communication of information	Here the State should communicate its strategy including information on its national legislation to all concerned.	
Records	Here records should be established and maintained in order to provide evidence of conformity to requirements.	
Improvement	Here States should improve the adequacy of the measures which are taken to give effect to those conventions they have accepted, and enforce national legislation. The State should determine acts to eliminate the causes of potential non-conformities in order to prevent their occurrence.	
<b>Flag States</b>		
Implementation	Here flag States should make every effort to effectively discharge their responsibilities and obligations, establish resources and processes capable of administering a safety and environmental protection programme and ensure that ships entitled to fly their flag are sufficiently and efficiently manned.	
Delegation of authority	Here flag states authorising recognized organizations to act on their behalf in conducting the surveys inspections, the issue of certificates and documents, the marking of ships and	

		Description
		other statutory work.
Enforcement	Here flag states should take all necessary measures to secure observance of international rules and standards by ships entitled to fly their flag and by entities and persons under their jurisdiction so as to ensure compliance with their international obligations.	
Flag state surveyors	Here flag States should define and document the responsibilities, authority and interrelation of all personnel, also the personnel has to be highly qualified and trained.	
Flag State Investigations	Here the flag States should be prepared to send qualified and experienced investigators competent in matters relating to the casualty. Ship casualties should be investigated and reported in accordance with the relevant IMO conventions and the guidelines developed by IMO.	
Evaluation and Review	Here the flag States should periodically evaluate their performance according to the implementation of administrative processes.	
<b>Coastal States</b>		
Implementation	Here coastal States should perform their obligations and rights under mandatory IMO instruments.	
Enforcement	Here coastal States should take all necessary measures to ensure their observance of international rules while fulfilling their obligations.	
Evaluation and review	Here coastal States should periodically evaluate their performance in respect of exercising their rights and meting their obligations under mandatory IMO instruments.	
<b>Port States</b>		
Implementation	Here port States should fulfil their responsibilities with respect to maritime safety and environmental protection including pollution prevention.	
Enforcement	Here to fulfil the whole range of obligations port State should provide taking all measures of control by authorised and qualified officers in accordance to relevant procedures adopted by the Organization.	
Evaluation and Review	Here port States should on a periodic basis evaluate their performance in respect of exercising their rights and meeting their obligations under mandatory IMO instruments.	

2. **Section 2 - Transposition Plan.** This section will then focus on gaps identified in transposition (if any) and discuss the need for a transposition plan. Should there be a need for a transposition plan, then the cornerstones of such a transposition plan and respective institutional competencies will be proposed together with an indicative timeline.

## 3. Assessment

### 3.1 Introduction

A mission to Turkmenistan was undertaken within the Framework of the SASEPOL Project. The scope of the mission was to review the level of transposition of IMO mandatory instruments into national legislation and assess compliance of Turkmenistan legislation in relation to the said Instruments. The information has been obtained through expert visits to Turkmenistan, meetings and interviews with relevant staff in the State Maritime Administration and other beneficiary organizations of the project (Appendix 8.4).

### 3.2 Common Areas

#### 3.2.1 Objective

The primary entity for implementing applicable instruments in meeting the obligations of Turkmenistan vis-à-vis the International mandatory instruments is the Turkmen Maritime and River Lines (TMRL) under the auspices of the Ministry of Transport and Communications. TMRL is consisted of various departments as set out in diagrammatic format reproduced in Appendix 8.4.

#### 3.2.2 Strategy

With reference to the scope of the project and in accordance with its Statute, TMRL is responsible for:

- the implementation and enforcement of relevant international mandatory instruments through laws of the Republic of Turkmenistan and or orders of the Cabinet of Ministers;
- the adherence to international recommendations, as appropriate.

#### 3.2.3 General

TMRL is the responsible entity for promulgating laws and regulations and for taking all other steps which may be necessary to give these instruments full and complete effect so as to ensure that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for which it is intended and is manned with competent maritime personnel. However the governmental focal point within the framework of IMO is the Ministry of Foreign Affairs.

TMRL is the responsible entity to:

- examine and verify level of compliance of national legislation with Mandatory Instruments;
- draft new or amended legislation in order to transpose new or amended international mandatory instruments into national legislation.

**Finding No 1: Several IMO mandatory instruments have not yet been transposed into national legislation e.g. SOLAS protocols 78 & 88, LL Protocol, MARPOL Annex VI.**

#### 3.2.4 Scope

The mandatory IMO instruments addressed in the Resolution A.996(25) are:

- the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974);
- the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1978);



- the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1988);
- the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78);
- the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL PROT 1997);
- the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW 1978);
- the International Convention on Load Lines, 1966 (LL 66);
- the Protocol of 1988 relating to the International Convention on Load Lines, 1966 (LL PROT 1988);
- the International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969); and
- the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972).

A vast number of other instruments have been made mandatory under the above mentioned conventions (see Appendix 8.4).

### **3.2.5 Initial Actions**

Turkmenistan has acceded number of IMO mandatory instruments in May 2009 (Appendix 8.4). In addition the following mandatory instruments are currently considered by the Turkmen authorities and / or are under discussion with the appropriate law making institutions:

- SOLAS Prot. 78 and SOLAS Prot. 88: respective documents submitted to the Cabinet of Ministers for approval;
- Loadlines Protocol: respective documents submitted to the Cabinet of Ministers for approval;
- MARPOL Prot Annex VI: respective documents submitted to the Cabinet of Ministers for approval;

Furthermore the STCW Convention (95 amendments) is not considered at present by TMRL.

**Finding No 2: The legal basis for the enforcement of national laws and regulations including the associated investigative and penal processes in relation to the mandatory instruments is not in place.**

### **3.2.6 Communication of Information**

Even though that TMRL is the primary entity, it has been established during interviews that other governmental entities are also involved in implementing international instruments. These entities are:

- Ministry of Foreign Affairs – Delegation to IMO;
- Ministry of Natural Protection - Oil Pollution preparedness and response;

### **3.2.7 Records**

Verification with the relevant requirements of the Code will be established in the near future during an international expert's mission.

### **3.2.8 Improvement**

There is no any information relevant to a procedure within TMRL in order to improve the adequacy of the measures which are taken to give effect to those conventions and protocols which they have accepted.

### **3.3 Flag States**

#### **3.3.1 Implementation**

The State Supervision of Technical State of Fleet, Navigation and Shipping (SSTVS) has been assigned with the responsibility of ensuring compliance of the ships flying the Turkmen Flag. Its tasks include inter alia registration of ships, certificates for the right to sail under Turkmen Flag, safety certificates, etc.

**Finding No 3: The present legislation does not cover all conventional requirements, thus the observance of international mandatory instruments by the ships flying the Turkmen Flag cannot be secured.**

The State Supervision of Technical State of Fleet, Navigation and Shipping (SSTVS) is also entitled to issue certificates of competency for Turkmen Seafarers, having been trained in the Turkmenbashi Lyceum No. 1.

**Finding No 4: Latest amendments of STCW Convention have not been transposed into national legislation.**

#### **3.3.2 Delegation of Authority**

So far only the Russian Maritime Register of Shipping (RS) has been recognized by the Turkmenistan and authorized to carry out specific statutory activities on behalf of, and under the responsibility and authority of, the Maritime Administration. The aforesaid delegation has been effected by a Government Order.

**Finding No 5: No evidence of a regulatory procedure for delegating authority to recognised organisations to act on behalf of Turkmenistan in conducting the surveys, inspections, the issue of certificates and documents, the marking of ships and other statutory work required under the IMO conventions.**

#### **3.3.3 Enforcement**

Ships flying the Turkmen flag are bound to comply with international. However the fact that not all IMO mandatory instruments have been transposed into the national legislation indicates a degree of non-compliance.

**Finding No 6: National legislation does not ensure that ships flying the Turkmen Flag can proceed to sea only in full compliance with the requirements of international rules and standards**

#### **3.3.4 Flag State Surveyors**

Officials of the State Supervision of Technical State of Fleet, Navigation and Shipping (SSTVS) are entitled to perform Flag State Surveys on board Turkmen ships.

### **3.3.5 Flag State Investigations**

**Finding No 7: National Legislation does not ensure that Ship casualties are investigated and reported in accordance with the relevant IMO conventions, and the guidelines developed by IMO**

### **3.3.6 Evaluation and Review**

No information related to a procedure within TMRL to evaluate their performance with respect to the implementation of administrative processes, procedures and resources necessary to meet their obligations as required by the conventions to which they are party.

## **3.4 Coastal State**

### **3.4.1 Implementation**

In terms of responsibility for coordinating a response in the event of oil pollution, this lies with the Ministry of Nature Protection as stipulated by the National Action Plan for Protection of the Caspian Sea Environment which was established through the Presidential Decree No. 9541 of 26.02.08. Monitoring of safety of navigation within the territorial waters lies with the respective Harbour Masters, which are bound to report to the State Supervision of Navigation and Shipping.

### **3.4.2 Enforcement**

**Finding No 8: : Taking into account that the latest edition of the IMO mandatory instruments has not yet been transposed into national legislation the observance of international rules when exercising state's rights and fulfilling its obligations cannot be ensured.**

### **3.4.3 Evaluation and Review**

There is no information related to a procedure within TMRL for periodical evaluation of its performance in respect of exercising its rights and meeting its obligations under mandatory IMO instruments.

## **3.5 Port State**

### **3.5.1 Implementation**

The State Supervision of Technical State of Fleet, Navigation and Shipping (SSTVS) is the executive power in the maritime field responsible port State control.

**Finding No 9: The role and responsibilities of the port State with respect to maritime safety and environmental protection are not clearly defined in the current legislation.**

### **3.5.2 Enforcement**

**Finding No 10 : Merchant Marine Code does not establish necessary legislation for verifying compliance with all mandatory instruments now in force.**

### **3.5.3 Evaluation and Review**

There is no information related to a procedure within TMRL for periodical evaluation of its performance in respect of exercising its rights and meeting its obligations under mandatory IMO instruments.

## 4. Transposition Plan

Based on the information available it is evidenced that not all IMO mandatory instruments have been ratified by Turkmenistan, nor are considered to be transposed. To this end it could be concluded that appropriate national legislation is not entirely in place thus the state cannot implement and enforce the provisions of the IMO mandatory instruments in an appropriate manner. It is therefore anticipated that a potential audit within the framework of VIMSAS will reveal numerous non conformities related to implementation and enforcement.

In order for the state to start the preparatory work in respect to VIMSAS, it is of utmost urgency to enact the appropriate legislation. It is therefore recommended that all mandatory instruments in their latest consolidated edition to be identified and transposed into national legislation along with various other requirements derived from the code itself (like penal procedures, policies, etc) . In order to timely resolve the problem the following transposition plan is proposed.

### **4.1 Procedure for Incorporation of Mandatory IMO Instruments into National Legislation**

#### **1. Step 1: Assignment of Responsibilities (Immediate Action)**

Even though TMRL is the primary entity with reference to the implementation of the IMO mandatory instruments, the focal point for the said organization is the Ministry of Foreign Affairs. Clear distinction of responsibilities should be envisaged in the near future and in any case before enacting new legislation.

#### **2. Step 2: Human Resources (Immediate Action)**

An appropriate number of qualified personnel need to be recruited by TMRL in order to assist on the timely transposition of the IMO mandatory instruments into the national legislation (drafting, translation, continuous monitoring of instruments status, etc.).

#### **3. Step 3: Identification of IMO Mandatory Instruments in their latest consolidated edition (3 to 5 weeks).**

TMRL should identify the latest edition for each and every one of the International mandatory instruments as these are stipulated in Resolution A. 996(25). This can be achieved through various instruments i.e. EMSA Rule Check or via the IMO itself- and assess the level of compliance of the national legislation with them.

#### **4. Step 4: Translating the IMO Mandatory Instruments in their latest consolidated edition into the Turkmen Language (6 to 8 months)**

It is of utmost importance that an accurate translation should take place before the actual drafting of legislation enacts. If the translation from the English version is problematic, all mandatory instruments are also available in Russian, which is one of the official IMO languages. It is suggested that once the

translation is completed, a verification for its accuracy (in relation to maritime terminology) to be performed by technical experts of the TMRL.

It should also be considered having the IMO mandatory instruments as a reference to the legislation used in its original form (i.e. in one of the Official IMO languages). This option obviously will speed up the whole process since no translation will be required.

#### **5. Step 5: Drafting of necessary legislation transposing the mandatory instruments into national law (3 to 6 months).**

The drafting should include all mandatory international instruments as these are stipulated in Resolution A.996(25) translated into the national language (or as a reference document in the original form).

Furthermore and in order for TMRL to effectively perform its tasks and to ensure compliance with VIMSAS the following provisions should also be drafted and included into the national legislation:

- investigative and penal processes (for Flag, Port and Coastal obligations);
- policies which will assist in the implementation and enforcement of the requirements of all safety and pollution prevention conventions;
- administrative instructions to implement applicable international rules and regulations as well as develop and disseminate any interpretative national regulations that may be needed;
- appropriate instruments of national law and interpretations thereof giving effect to the provisions of the conventions or specify whether the Administration's standards go beyond convention requirements in any respect.

#### **6. Step 6: Ratification of the necessary legislation (3 months)**

Since the whole procedure is of utmost urgency, it is proposed that the fastest way to enact legislation in accordance with national constitution to be adhered.

#### **7. Step 7: Communication of national legislation (immediately after ratification)**

Once the national legislation is in place TMRL should communicate national legislation to all parties concerned, including governmental entities involved in the implementation of IMO mandatory instruments, recognized organizations duly authorized to act on behalf of the republic of Turkmenistan and of course IMO.

#### **8. Step 8: Further Actions**

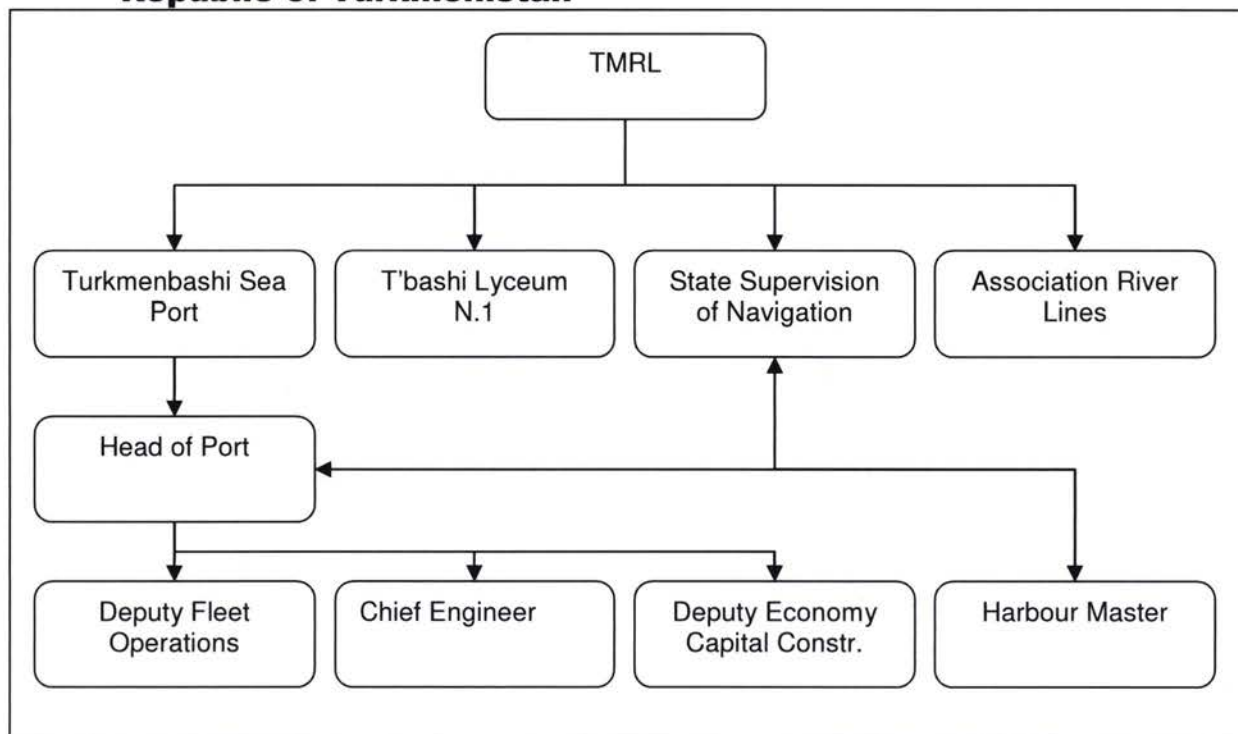
TMRL should assign responsibility to duly qualified personnel to **continuously** monitor developments within IMO, identify when a new or an amended instrument has been accepted by the Organisation and timely transpose it into national legislation by repeating steps 3 to 7.

## 5. Appendices

### 5.1 Representatives from Various Entities Interviewed by the International Expert

- Deputy Head of the Turkmen Maritime and River Lines;
- Head of Turkmenbashi Sea Port;
- all the staff members, the Head included of the State Supervision of Navigation; and
- Staff of the Technical Development Department.

### 5.2 Functional Structure of the State Maritime Administration of the Republic of Turkmenistan



### 5.3 Instruments Made Mandatory under IMO Conventions

SOLAS 74	Res. MSC.133(76), as amended	reg. II-1/3-6.2.1
	FSS Code	reg. II-2/3.22
	FTP Code	reg. II-2/3.23
	LSA Code	reg. III/3.10
	CSS Code, sub-chapter 1.9	reg. VI/2.1
	Grain Code	reg. VI/8.1
	IMDG Code	reg. VII/1.1
	IBC Code	reg. VII/8.1
	IGC Code	reg. VII/11.1

	<i>INF Code</i>	<i>reg. VII/14.1</i>
	<i>ISM Code</i>	<i>reg. IX/1.1</i>
	<i>1994 HSC Code</i>	<i>reg. X/1.1</i>
	<i>2000 HSC Code</i>	<i>reg. X/1.2</i>
	<i>Res. A.739(18)</i>	<i>reg. XI-1/1</i>
	<i>Res. A.789(19)</i>	<i>reg. XI-1/1</i>
	<i>Res. A.744(18), as amended</i>	<i>reg. XI-1/2</i>
	<i>Res. 4 of the 1997 SOLAS Conf.</i>	<i>reg. XII/1.5 (reg. XII/1.7 as of 1.7.06)</i>
	<i>Res. MSC.169(79)</i>	<i>reg. XII/7.2</i>
	<i>Res. MSC.168(79)</i>	<i>reg. XII/14</i>
<i>MARPOL 73/78</i>	<i>Res. MEPC.94(46), as amended</i>	<i>Annex I, reg. 20.6</i>
	<i>IBC Code</i>	<i>Annex II, reg. 1.4</i>
	<i>BCH Code</i>	<i>Annex II, reg. 1.4</i>
	<i>NOx Technical Code</i>	<i>Annex VI, reg. 2(5)</i>
<i>STCW 78</i>	<i>STCW Code, Part A</i>	<i>reg. I/1.2.3</i>

#### 5.4 IMO Conventions Acceded to by Turkmenistan

Name of Instrument (Date of accession)	Transposed into national legislation
SOLAS Con. 74	Ratified on 04.05.2009
Tonnage Con. 69	Ratified on 04.05.2009
Loadlines Con. 66	Ratified on 04.05.2009
COLREG Con. 72	Ratified on 04.02.2009
STCW Con. 78	Ratified on 04.05.2009
MARPOL Annex 1/2	Ratified on 04.05.2009
MARPOL Annex 3	Ratified on 04.05.2009
MARPOL Annex 4	Ratified on 04.05.2009
MARPOL Annex 5	Ratified on 04.05.2009
CLC Con. 69	Ratified on 20.12.2009
CLC Protocol 92	Will be ratified on 21.09.2010