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## **PROPOSAL**

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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 27 October 2023

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the International Maritime Organization during the 33<sup>rd</sup> session of the Assembly on the adoption of amendments to the Guidelines under the Harmonized System of Survey and Certification, the Guidelines on the implementation of the International Safety Management Code by Administrations, the Non-exhaustive list of obligations under instruments relevant to the IMO Instruments Implementation Code and the Guidelines on places of refuge for ships in need of assistance, and the adoption of the draft Assembly Resolution to promote actions to prevent illicit operations of “dark shipping” in the maritime sector

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Delegations will find attached document COM(2023) 663 final.

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Encl.: COM(2023) 663 final



Brussels, 27.10.2023  
COM(2023) 663 final

2023/0380 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the International Maritime Organization during the 33<sup>rd</sup> session of the Assembly on the adoption of amendments to the Guidelines under the Harmonized System of Survey and Certification, the Guidelines on the implementation of the International Safety Management Code by Administrations, the Non-exhaustive list of obligations under instruments relevant to the IMO Instruments Implementation Code and the Guidelines on places of refuge for ships in need of assistance, and the adoption of the draft Assembly Resolution to promote actions to prevent illicit operations of “dark shipping” in the maritime sector**

## **EXPLANATORY MEMORANDUM**

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns a decision establishing the position to be taken on the Union's behalf at the 33<sup>rd</sup> session of the International Maritime Organization's Assembly (A 33), taking place from 27 November to 6 December 2023.

During the 33<sup>rd</sup> Assembly, it is envisaged to adopt:

- (1) Amendments to the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), 2021 and revoke Assembly resolution A.1156(32);
- (2) Amendments to the Guidelines on the implementation of the International Safety Management (ISM) Code by Administrations;
- (3) Amendments to the non-exhaustive list of obligations under instruments relevant to the IMO Instruments Implementation Code (III Code);
- (4) Amendments to the Guidelines on places of refuge for ships in need of assistance (resolution A.949(23)); and,
- (5) a draft Assembly Resolution to promote actions to prevent illicit operations of “dark shipping” in the maritime sector.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The Convention on the International Maritime Organization**

The Convention on the International Maritime Organization (IMO) establishes the IMO. The IMO's purpose is to provide a forum for co-operation in the field of regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade. It furthermore aims to encourage the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships, promoting a level playing field. It also to deal with related administrative and legal matters.

The Convention entered into force on 17 March 1958.

All Member States are parties to the Convention. The Union is not a party to the Convention.

#### **2.2. The International Maritime Organization**

The International Maritime Organization (IMO) is the United Nations' specialised agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. It is the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented.

Membership in the IMO is open to all States and all EU Member States are IMO members. The EU's relations with IMO are based notably on the Arrangement for Co-operation and Collaboration concluded between the Inter-Governmental Maritime Consultative Organisation (IMCO) and the Commission of the European Communities in 1974.

The IMO's Assembly is the governing body of the organisation. It consists of all IMO Member States, meeting every second year and can recommend to Members for adoption regulations and guidelines or amendments to such regulations and guidelines agreed in all of

the IMO's five main Committees. Among these five committees are the Maritime Safety Committee (MSC) and Marine Environment Protection Committee (MEPC).

### **2.3. The envisaged act of the IMO's Assembly**

On 27 November to 6 December 2023, during its 33<sup>rd</sup> session, the Assembly is to adopt amendments to: the Guidelines under the Harmonized System of Survey and Certification (HSSC), the Guidelines on the implementation of the ISM Code by Administrations, to the Non-exhaustive list of obligations under instruments relevant to the III Code, to the Guidelines on places of refuge for ships in need of assistance and to adopt a draft Assembly Resolution to promote actions to prevent illicit operations of "dark shipping" in the maritime sector.

The purpose of the envisaged amendments to the Guidelines under the harmonized system of survey and certification is to update them to reflect requirements deriving from amendments to the relevant mandatory instruments entering into force up to and including 31 December 2023, including amendments to develop the guidance on assessments and applications of remote surveys.

The purpose of the envisaged amendments to Guidelines on the implementation of the ISM Code by Administrations is to provide guidance on remote surveys and remote audits.

The purpose of the envisaged amendments to the Non-exhaustive list of obligations under instruments relevant to the III Code is to update the 2021 list following additional legislative provisions that have been adopted by both MSC and MEPC.

The purpose of the envisaged amendments to the Guidelines on places of refuge for ships in need of assistance is to ensure that the IMO resolution remains up to date and continues to serve as an effective instrument providing a clear framework, to deal with a ship seeking a place of refuge, in a consistent and harmonized manner globally.

The purpose of the envisaged Assembly Resolution to promote actions to prevent illicit operations of "dark shipping" in the maritime sector is to encourage and urge flag States, port States and coastal States to take measures to prevent actions such as ship-to-ship transfers at sea.

## **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

### **3.1. Amendments to the Guidelines under the Harmonized System of Survey and Certification, 2021, and revocation of A.1156(32)**

The Sub-Committee on Flag State Implementation, the predecessor of the Sub-Committee on Implementation of IMO Instruments (III), agreed to revise the HSSC Survey Guidelines on a continuous basis. The Survey Guidelines are therefore updated at every session of the IMO Assembly. The latest version of the Survey Guidelines is included in resolution A.1156(32) and was adopted at the 32<sup>nd</sup> session of the Assembly in 2021.

In its 7th session, III re-established the Correspondence Group on the Review of the Survey Guidelines under the HSSC and the Non-exhaustive list of obligations under instruments relevant to the IMO Instruments Implementation Code (III Code), under the coordination of China. This had been done the same way at previous sessions of III.

The Correspondence Group was asked, among others, to continue to develop draft amendments to the Survey Guidelines, deriving from the amendments to the relevant mandatory instruments due to enter into force up to and including 31 December 2023, taking into account the outcome of MSC 103, MEPC 76 and future sessions of MSC and MEPC, as

appropriate, with a view to submission of draft amendments, as finalized in a consolidated form, for adoption at A 33.

In the 8<sup>th</sup> session of the III, the Sub-Committee noted that, due to time constraints, the Working Group was unable to review the draft amendments to the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), 2021 (resolution A.1156(32)), and deferred the matter to III 9.

The Sub-Committee agreed that the draft amendments to the Survey Guidelines needed to be further developed to include the requirements deriving from amendments to relevant IMO instruments entering into force up to and including 31 December 2023, with a view to submission of draft amendments to III 9 for finalization prior to potential direct submission in the consolidated form to A 33 for adoption, subject to approval by the Committees.

The Sub-Committee also agreed to re-establish the Correspondence Group on the Survey Guidelines under the HSSC, the Non-exhaustive List of Obligations, and the Guidance on Remote Surveys, Audits and Verifications.

In III 9, the Sub-Committee agreed to the draft amendments to the Survey Guidelines under the HSSC (resolution A.1156 (32)), to be adopted during the 33<sup>rd</sup> session of the Assembly.

The Union's position was to support the proposed amendments but to be referred to the working group for review and finalisation during the session.

The proposed amendments derive from the amendments to the relevant mandatory instruments due to enter into force up to and including 31 December 2023, including provisions for remote survey. The update to be adopted refers to remote surveys and audits and keeps their scope limited only to extraordinary circumstances, until IMO develops detailed Guidelines.

The Union should therefore support these amendments, as they will ensure that the HSSC Guidelines take into account the new developments and remain up to date.

### **3.2. Amendments to Guidelines on the implementation of the ISM Code by Administrations**

During MSC 104, new outputs were established on regulating remote survey and audit; and on developing guidelines for remote inspections and verifications in the field of maritime security. The Committee agreed to include a new output on "Development of guidance on assessments and applications of remote surveys, ISM Code audits and International Ship and Port Facility Security Code (ISPS Code) verifications", in the biennial agenda of the III Sub-Committee for 2022-2023 and the provisional agenda for III 8, with a target completion year of 2024. The same was agreed by MEPC 77.

During III 8, the Sub-Committee agreed that the framework for the output should consist of the following three parts or sub-outputs:

1. amendments to the Survey Guidelines under the HSSC (part 1);
2. amendments to the Revised Guidelines on the implementation of the International Safety Management (ISM) Code (part 2); and
3. development of guidance on assessments and applications of remote surveys, ISM Code audits and ISPS Code verifications (part 3).

The Sub-Committee also agreed that amendments to the Survey Guidelines under the HSSC (part 1) and amendments to the Revised Guidelines on the implementation of the International Safety Management (ISM) Code (part 2) will be adopted by A 33 in 2023.

The Sub-Committee instructed the Correspondence Group on the Survey Guidelines under the HSSC, the Non-exhaustive List of Obligations, and the Guidance on Remote Surveys, Audits and Verifications, among others, to further develop and finalize amendments to the Revised Guidelines on the implementation of the ISM Code by Administrations (resolution A.1118(30)).

MSC 106 and MEPC 79 had authorized III 9 to report the outcome of its work related to the draft Survey Guidelines under the HSSC, 2023, including provisions for remote surveys and the revised Guidelines on the implementation of the ISM Code by Administrations, including provisions for remote ISM Code audits, which are expected to be adopted as Assembly resolutions at A 33.

During the III 9, the Sub-Committee agreed to the amendments to the Revised Guidelines on the implementation of the ISM Code by Administrations (resolution A.1118(30)) with a view to submission to A 33 for adoption.

The Union's position was to support the revised Guidelines on the implementation of the ISM Code by administrations, and recommended that they are reviewed in a working group for finalisation, taking also into consideration additional proposing amendments.

The Union position should be to support these amendments, as they serve as a starting point for the framework for developing guidance on remote surveys, ISM Code audits and ISPS Code verifications, and its further development and finalization at the next stage.

### **3.3. Amendments to the non-exhaustive list of obligations under instruments relevant to the III Code**

As guidance on the implementation and enforcement of IMO instruments, in particular concerning the identification of auditable areas relevant to the IMO Member State Audit Scheme, the IMO has been developing a non-exhaustive list of obligations under instruments relevant to the IMO Instruments Implementation Code (III Code). The latest revision of this list was in 2021 as annex to Resolution A.1157(32) adopted by A 32. Since then, both MSC and MEPC adopted additional legislative provisions.

The III 8 had agreed that the annexes to the 2021 Non-exhaustive list of obligations under instruments relevant to the IMO instruments Implementation Code needed to be further developed in order to keep the list updated with amendments to the relevant mandatory IMO instruments entering into force up to and including 1 July 2024.

The Sub-Committee also had established the Correspondence Group on the Survey Guidelines under the HSSC, the Non-exhaustive List of Obligations, and the Guidance on Remote Surveys, Audits and Verifications, under the coordination of China, to, inter alia, continue to develop the draft amendments to the Non-exhaustive list of obligations, with a view to submission of draft amendments to the Non-exhaustive list, as finalized in a consolidated form, for adoption at A 33.

Due to time constraints, III 8 was unable to finalise the review of the proposed draft amendments to the 2021 Non-exhaustive list of obligations under instruments relevant to the III Code. Therefore, the Sub-Committee agreed to continue the review in the Correspondence Group with a view to finalisation at III 9.

The Union's position at III 9 was to support the relevant submissions that are used as a basis to update the 2021 Non-exhaustive list of obligations under instruments relevant to the III Code.

The Union's position should be to support these amendments as to keep the list updated with the amendments to the relevant mandatory IMO instruments entering into force up to and including 1 July 2024.

#### **3.4. Amendments to the Guidelines on places of refuge for ships in need of assistance (resolution A.949(23))**

MSC 100 approved the request for a new output to update the current IMO resolution A.949(23) on Guidelines on places of refuge for ships in need of assistance.

The 7<sup>th</sup> session of the Sub-Committee on Navigation, Communications and Search and Rescue (NCSR 7), which was entrusted to work on this issue, agreed to establish a Correspondence Group, under the coordination of the United Kingdom, to continue the work. It also developed a work plan with a view to finalise the Guidelines at NCSR 8, for approval by MSC, MEPC and the Legal Committee (LEG), in time for adoption at Assembly 32. This fast track work plan was approved by MSC 102.

Unfortunately, NCSR 8 was unable to complete the draft Guidelines. In view of the lack of progress in finalising the guidelines the Sub-Committee agreed to re-establish the Correspondence Group, under the coordination of the United Kingdom, with a view to finalisation at NCSR 9.

NCSR 9 took into account decisions, comments and proposals made in plenary, to review and finalize the draft revision of resolution A.949(23) on Guidelines on places of refuge for ships in need of assistance. The Sub-Committee agreed to the draft Assembly resolution on Guidelines on places of refuge for ships in need of assistance, and invited the Committee to approve it, with a view to subsequent approval by MEPC and the LEG Committee, and adoption by A 33.

The Union's position was to actively support the finalisation of the revision of the Guidelines on places of refuge for ships in need of assistance.

MSC 106 approved the draft Assembly resolution on the revision of the Guidelines on places of refuge for ships in need of assistance (resolution A.949 (23)), following the finalization thereof by NCSR 9, and invited MEPC and the Legal Committee to approve the same, with a view to adoption by the Assembly at its thirty-third session.

LEG 110 approved the same draft Assembly resolution with some minor amendments which do not affect the operational content of the guidelines.

Lastly, MEPC 80 approved the draft Assembly resolution on Guidelines on places of refuge for ships in need of assistance, as amended by LEG 110, for consideration, with a view to adoption, by A 33.

The Union's position should be to support these amendments to ensure that the IMO resolution remains up to date and continues to serve as an effective instrument providing a clear framework, to deal with a ship seeking a place of refuge, in a consistent and harmonized manner globally.

#### **3.5. Adoption of a draft Assembly Resolution to promote actions to prevent illicit operations of "dark shipping" in the maritime sector**

During MEPC 80, the Committee considered a submission to raise awareness of the potential environmental risks, the consequences and concerns for global pollution prevention and liability and compensation regimes that exist because of the increase in ship-to-ship (STS) transfers at sea, including by ships using "dark operations" (i.e. turning off satellite transponders and using other methods of obfuscation such as location tampering, course

deviations) to circumvent restrictions set out in sanctions regimes and high insurance costs. Accordingly, the Committee considered setting out in the annex to the document a draft Assembly resolution urging Member States and all relevant stakeholders to promote actions to prevent illicit operations of "dark shipping" in the maritime sector.

Following the discussion, the Committee agreed that there was general support for a draft Assembly resolution to urge Member States and all relevant stakeholders to promote actions to prevent illicit operations of dark shipping in the maritime sector. The Committee agreed to forward the draft Assembly resolution to the thirty-third session of the Assembly, together with the comments and views expressed at this session, for further consideration with a view to finalization and adoption by A 33.

As part of the global multilateral system, the EU adheres to the United Nations (UN) Security Council Resolutions imposing sanctions against third countries, which it transposes into EU legislation. It also imposes sanctions on its own (EU autonomous measures) or adds its own restrictions on top of those mandated by the UN (mixed sanctions regimes).

The adoption of the draft Resolution is expected to benefit the implementation of Articles 3eb and 3ec of Council Regulation 833/2014.

Therefore, the Union's position should be to support the adoption of this Resolution to ensure that any measures introduced at IMO level to address "dark operations" the object or effect of which could violate or circumvent sanctions is consistent with the measures applicable at Union level.

### **3.6. Relevant EU legislation and EU competence**

#### *3.6.1. Amendments to the Guidelines under the Harmonized System of Survey and Certification, 2021*

Regulation (EC) No 391/2009 on common rules and standards for ship inspection and survey organisations<sup>1</sup>. It creates a system of licensing (recognition), which is subject to a number of criteria and obligations to ensure that a recognised organisation applies the same standards to all ships in its register, irrespective of the flag the ships fly.

Annex I, criterion B7(k) of that Regulation states:

"7. The recognised organisation must ensure that:

(k) the statutory surveys and inspections required by the harmonised system of survey and certification for which the recognised organisation is authorised are carried out in accordance with the provision set out in the Annex and Appendix to IMO Resolution A.948(23) on survey guidelines under the harmonised system of survey and certification." (This should be taken to refer to the up-to-date version of the Survey Guidelines under the HSSC.)

Therefore, the revision of Survey Guidelines under the Harmonized System of Survey and Certification, 2021 is capable of decisively influencing the requirements applicable under Regulation (EC) No 391/2009.

#### *3.6.2. Amendments to Guidelines on the implementation of the ISM Code by Administrations*

Regulation (EC) No 391/2009, as amended, lays down common rules and standards for ship inspection and survey organisations. Point A.3 of Annex I to the Regulation requires that the Recognised Organisations have the necessary technical and human resources to deliver their

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<sup>1</sup> OJ L 131, 28.5.2009, p. 11

work while point B.1 requires that they maintain a worldwide network of exclusive surveyors. In addition, point B.10 of Annex I to the Regulation requires the Recognised Organisations to have the necessary means of assessing, through the use of qualified professional staff and pursuant to the provisions set out in the Annex to IMO Resolution A.913(22) on guidelines on implementation of the International Safety Management (ISM) Code by administrations, the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.

Furthermore, Regulation (EC) No 336/2006<sup>2</sup> incorporates the International Safety Management Code (ISM Code) in the Union legislation.

Therefore, the amendments to the Guidelines on the implementation of the ISM Code by Administrations are capable of decisively influencing the requirements applicable under Regulation (EC) No 391/2009 and Regulation (EC) No 336/2006.

### *3.6.3. Amendments to the non-exhaustive list of obligations under instruments relevant to the III Code*

Directive 2009/21/EC on compliance with flag State requirements<sup>3</sup> aims to ensure that EU Member States respect their obligations as flag States and meet the requirements incumbent on a flag State under IMO International Conventions. Pursuant to Article 7 of that Directive, an audit procedure led by the IMO and for which the III Code constitute the relevant standard, has been established, which aims to supervise the flag State performance. In addition, the III Code is also taken into account by Regulation (EC) No 391/2009, as amended.

Therefore, the amendments to the non-exhaustive list of obligations under instruments relevant to the III Code are capable of decisively influencing the requirements applicable under Directive 2009/21/EC and Regulation (EC) No 391/2009.

### *3.6.4. Amendments to the Guidelines on places of refuge for ships in need of assistance (resolution A.949(23))*

Regulation 2002/59/EC<sup>4</sup>, as amended, establishes a Community vessel traffic monitoring and information system.

Article 20a, paragraph (2), directly addresses the plans for the accommodation of ships in need of assistance by requiring that such plans shall be prepared on the basis of IMO Resolutions A.949(23) on Guidelines on places of refuge for ships in need of assistance and A.950(23) on maritime assistance services (MAS).

Therefore, the amendments to the Guidelines on places of refuge for ships in need of assistance are capable of decisively influencing the requirements applicable under Regulation 2002/59/EC.

### *3.6.5. Adoption of a draft Assembly Resolution to promote actions to prevent illicit operations of “dark shipping” in the maritime sector*

Council Decision 2014/512/CFSP<sup>5</sup> and Council Regulation (EU) No 833/2014<sup>6</sup>, as amended, concern restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

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<sup>2</sup> OJ L 64, 4.3.2006, p. 1

<sup>3</sup> OJ L 131, 28.5.2009, p. 132

<sup>4</sup> OJ L 208, 5.8.2002, p. 10

<sup>5</sup> OJ L 229, 31.7.2014, p. 13

<sup>6</sup> OJ L 229, 31.7.2014, p. 1

Article 3eb, paragraph 1, of Council Regulation (EU) No 833/2014 prohibits, as of 24 July 2023, access to EU ports for vessels that engage in ship-to-ship transfers suspected to be in breach of: the prohibition, laid down in Article 3m paragraphs 1 and 2 of that Regulation, to “purchase, import or transfer, directly or indirectly, crude oil or petroleum products, as listed in Annex XXV, if they originate in Russia or are exported from Russia” and to “provide, directly or indirectly, technical assistance, brokering services, financing or financial assistance or any other services related to the [the latter] prohibition”; the prohibition, laid down in Article 3n paragraphs 1 and 4 of that Regulation, “to provide, directly or indirectly, technical assistance, brokering services or financing or financial assistance, related to the trading, brokering or transport, including through ship-to-ship transfers, to third countries of crude oil or petroleum products as listed in Annex XXV which originate in Russia or which have been exported from Russia” and to “to trade, broker or transport, including through ship-to-ship transfers, to third countries, crude oil falling under CN code 2709 00 , as of 5 December 2022, or petroleum products falling under CN code 2710 , as of 5 February 2023, as listed in Annex XXV, which originate in Russia or which have been exported from Russia”.

Likewise, Article 3eb paragraph 2 of Council Regulation (EU) No 833/2014 prohibits access to vessels which does not notify the competent authority at least 48 hours in advance about a ship-to-ship transfer occurring within the Exclusive Economic Zone of a Member State or within 12 nautical miles from the baseline of that Member State’s coast.

Article 3ec of Council Regulation (EU) No 833/2014 prohibits, as of 24 July 2023, access to EU ports for vessels suspected of illegally interfering with, switching off or otherwise disabling their shipborne automatic identification system (AIS) at any point of the voyage to a Member State’s ports or locks, in breach of SOLAS Regulation V/19, point 2.4, when transporting Russian crude oil or petroleum products subject to the above-mentioned prohibitions set out in Article 3m(1) and (2) and Article 3n(1) and (4).

The proposed Resolution provides for a definition of the “dark fleet” or “shadow fleet” which would comprise also “ships that are engaged in illegal operations for the purposes of circumventing sanctions” through conducts covered by Articles 3eb and 3ec of Council Regulation 833/2014, and calls on IMO Member States (including EU Member States) to promote actions to prevent such illegal operations.

Therefore, the adoption of a draft Assembly Resolution to promote actions to prevent illicit operations of “dark shipping” in the maritime sector is capable of decisively influencing the application of Council Decision 2014/512/CFSP and Council Regulation (EU) No 833/2014.

#### 3.6.6. *EU competence*

The subject matter of the envisaged acts concerns an area for which the Union has exclusive external competence by virtue of the last limb of Article 3(2) TFEU, as the envisaged acts are liable to ‘affect common rules or alter their scope’),

## 4. **LEGAL BASIS**

### 4.1. **Procedural legal basis**

#### 4.1.1. *Principles*

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement.<sup>7</sup>

The concept of ‘acts having legal effects’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’.<sup>8</sup>

#### 4.1.2. Application to the present case

The IMO’s Assembly is a body set up by an agreement, the Convention on the International Maritime Organization.

The acts which the Assembly is called upon to adopt constitute acts having legal effects. The envisaged acts are capable of decisively influencing the content of the following EU legislation and notably:

- Regulation (EC) No 391/2009 on common rules and standards for ship inspection and survey organisations. This is because it requires a recognised organisation to ensure that the statutory surveys and inspections are carried out in accordance with the Survey Guidelines under the Harmonised System of Survey and Certification. . Additionally, the Regulation obliges recognised organisations to have the necessary means of assessing the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification, through the use of qualified staff and pursuant to the guidelines on implementation of the International Safety Management (ISM) Code by administrations. The III Code is also taken into account in accordance with the definition of ‘international conventions’ in Regulation (EC) No 391/2009, as amended.
- Regulation (EC) No 336/2006 which incorporates the International Safety Management Code (ISM Code) in the Union legislation, and which will need to take into consideration the amendments adopted in relation to IMO Resolution A.1118(30) on guidelines on implementation of the International Safety Management (ISM) Code by administrations.
- Directive 2009/21/EC on compliance with flag State requirements. This is because the non-exhaustive list is a supporting tool for the implementation of the IMO Member State Audit Scheme (IMSAS), which is mentioned in the abovementioned Directive.
- Regulation 2002/59/EC establishing a Community vessel traffic and monitoring system. This is because Article 20a on the plans for the accommodation of ships in need of assistance directly refers to the IMO resolution A.949(23) which will be revised.
- Council Decision 2014/512/CFSP and Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. This is because the draft Resolution covers operations prohibited under Articles 3eb and 3ec of Council Regulation (EU) No 833/2014. Accordingly, the Union should ensure that any measure introduced at IMO level to address “dark operations” the object or effect of which is to violate or circumvent sanctions is

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<sup>7</sup> Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraph 64.

<sup>8</sup> Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

consistent with the measures applicable at Union level pursuant to Articles 3eb and 3ec of Council Regulation (EU) No 833/2014.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

## **4.2. Substantive legal basis**

### *4.2.1. Principles*

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

### *4.2.2. Application to the present case*

The main objective and content of the envisaged act relate to maritime transport. Therefore, the substantive legal basis of the proposed decision is Article 100(2) TFEU.

## **4.3. Conclusion**

The legal basis of the proposed decision should be Article 100(2) TFEU, in conjunction with Article 218(9) TFEU.

Proposal for a

## COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the International Maritime Organization during the 33<sup>rd</sup> session of the Assembly on the adoption of amendments to the Guidelines under the Harmonized System of Survey and Certification, the Guidelines on the implementation of the International Safety Management Code by Administrations, the Non-exhaustive list of obligations under instruments relevant to the IMO Instruments Implementation Code and the Guidelines on places of refuge for ships in need of assistance, and the adoption of the draft Assembly Resolution to promote actions to prevent illicit operations of “dark shipping” in the maritime sector**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Convention on the International Maritime Organization (‘IMO’) entered into force on 17 March 1958.
- (2) The IMO is a specialised agency of the United Nations with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships. All Union Member States are members of the IMO. The Union is not a member of the IMO.
- (3) Pursuant to Article 15(j) of the IMO Convention, the Assembly may adopt regulations and guidelines to Members concerning maritime safety, the prevention and control of marine pollution from ships and other matters concerning the effect of shipping on the marine environment assigned to the Organization by or under international instruments, or amendments to such regulations and guidelines which have been referred to it.
- (4) The IMO’s Assembly, in its 33<sup>rd</sup> session from 27 November to 6 December 2023, is to adopt the Guidelines under the Harmonized System of Survey and Certification (HSSC), 2023, and revoke IMO Assembly resolution A.1156(32), which contains the HSSC Survey Guidelines, 2021, to adopt amendments to the Guidelines on the implementation of the ISM Code by Administrations, to the Non-exhaustive list of obligations under instruments relevant to the III Code and to the Guidelines on places of refuge for ships in need of assistance, as well as to adopt the draft Assembly Resolution to promote actions to prevent illicit operations of “dark shipping” in the maritime sector.
- (5) It is appropriate to establish the position to be taken on the Union’s behalf during the 33<sup>rd</sup> session of the IMO’s Assembly, as the envisioned acts are capable of decisively influencing the contents of Union law, namely Regulation (EC) No 391/2009 on

common rules and standards for ship inspection and survey organisations<sup>1</sup>, Regulation (EC) No 336/2006 which incorporates the International Safety Management Code (ISM Code) in the Union legislation<sup>2</sup>, the Directive 2009/21/EC on compliance with flag State requirements<sup>3</sup>, the Regulation 2002/59/EC establishing a Community vessel traffic and monitoring system<sup>4</sup>, the Council Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine<sup>5</sup> and the Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine<sup>6</sup>.

- (6) Therefore, the Union should support the adoption of the HSSC Survey Guidelines, 2023 and the revocation of the HSSC Survey Guidelines 2021 and the amendments to the non-exhaustive list of obligations under instruments relevant to the III Code because this will ensure that they remain up to date.
- (7) The Union should support the amendments to Guidelines on the implementation of the ISM Code by Administrations to develop the guidance on assessments and applications of remote audits.
- (8) The Union should support the amendments to the Guidelines on places of refuge for ships in need of assistance (resolution A.949(23)) so as to provide a clear framework, to deal with a ship seeking a place of refuge, in a consistent and harmonized manner.
- (9) The Union should support the adoption of the draft Assembly Resolution to promote actions to prevent illicit operations of “dark shipping” in the maritime sector, which is expected to benefit the implementation of Articles 3eb and 3ec of Council Regulation 833/2014, to ensure that any measures introduced at IMO level to address “dark operations” the object or effect of which is to violate or circumvent sanctions is consistent with the measures applicable at Union level.
- (10) The Union's position is to be expressed by the Member States of the Union that are members of the IMO, and by the Commission, acting jointly,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on the Union's behalf in the 33<sup>rd</sup> session of the International Maritime Organization's ('IMO') Assembly shall be to agree to the amendments to: the Guidelines under the Harmonized System of Survey and Certification (HSSC), 2021, and revoke IMO Assembly resolution A.1156(32); to the amendments to the Guidelines on the implementation of the ISM Code by Administrations: to the Non-exhaustive list of obligations under instruments relevant to the III Code and the Guidelines on places of refuge for ships in need of assistance, and to agree to the adoption of the draft Assembly Resolution to promote actions to prevent illicit operations of “dark shipping” in the maritime sector.

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<sup>1</sup> OJ L 131, 28.5.2009, p. 11

<sup>2</sup> OJ L 64, 4.3.2006, p. 1

<sup>3</sup> OJ L 131, 28.5.2009, p. 132

<sup>4</sup> OJ L 208, 5.8.2002, p. 10

<sup>5</sup> OJ L 229, 31.7.2014, p. 13

<sup>6</sup> OJ L 229, 31.7.2014, p. 1

*Article 2*

The position referred to in Article 1 shall be expressed by the Commission and by the Member States of the Union that are members of the IMO's Assembly, acting jointly in the interest of the Union.

*Article 3*

This Decision is addressed to the Commission and the Member States.

Done at Brussels,

*For the Council  
The President*