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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	28 September 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION Amending Council Decision (EU) 2020/721 of 19 May 2020 to include the position to be taken on behalf of the European Union in the International Maritime Organization during the 75th session of the Marine Environment Protection Committee and the 102nd session of the Maritime Safety Committee on the approval of a MSC-MEPC.5 circular on a Model Agreement for the authorisation of Recognised Organisations acting on behalf of the Administration

Delegations will find attached document COM(2020) 586 final.

Encl.: COM(2020) 586 final

EUROPEAN
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Brussels, 28.9.2020
COM(2020) 586 final

2020/0271 (NLE)

Proposal for a

COUNCIL DECISION

Amending Council Decision (EU) 2020/721 of 19 May 2020 to include the position to be taken on behalf of the European Union in the International Maritime Organization during the 75th session of the Marine Environment Protection Committee and the 102nd session of the Maritime Safety Committee on the approval of a MSC-MEPC.5 circular on a Model Agreement for the authorisation of Recognised Organisations acting on behalf of the Administration

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns an amendment to Council Decision (EU) 2020/721 of 19 May 2020[1] establishing the position to be taken on the Union's behalf at the 102nd session of the International Maritime Organization's Maritime Safety Committee (MSC 102), which will now take place in London from 4 to 11 November 2020 and at the 75th session of the International Maritime Organization's Marine Environment Protection Committee (MEPC 75), which will now take place in London from 16 to 20 November 2020, in connection with the envisaged adoption of an MSC-MEPC.5 Circular on a Model Agreement for the authorisation of Recognised Organisations acting on behalf of the Administration

Context of the proposal

1.1. 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.

All Member States are parties to the International Convention for the Safety of Life at Sea ('SOLAS'), 1974, which entered into force on 25 May 1980. The Union is not a party to SOLAS.

All Member States are parties to the International Convention for the Prevention of Pollution from Ships ('MARPOL'), 1973, which entered into force on 2 October 1983 and to Annex VI, which entered into force on 18 May 2005. The Union is not a party to MARPOL.

1.2. 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

[1] Council Decision (EU) 2020/721 of 19 May 2020 on the position to be taken on behalf of the European Union within the International Maritime Organization's Marine Environment Protection Committee during its 75th session and within the International Maritime Organization's Maritime Safety Committee during its 102nd session as regards the adoption of amendments to regulations 2, 14 and 18 and appendices I and VI of Annex VI to the International Convention for the Prevention of Pollution from Ships, Parts A-1, B, B-1, B-2 to B-4 of Chapter II-1 of the International Convention for the Safety of Life at Sea, Parts A-1 and B-1 of the International Code of Safety for Ships Using Gases or Other Low-flashpoint Fuels and resolution A.658(16) on the use and fitting of retro-reflective materials on life-saving appliances (OJ L 171, 2.6.2020, p. 1–3)

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 organisation is open to all States and all EU Member States are members of the IMO. Since 1974, the European Commission has held an observer status in the International Maritime Organisation. This is based on an Arrangement for Co-operation and Collaboration between the Inter-Governmental Maritime Consultative Organization (IMCO) and the Commission of the European Communities on matters of mutual interest to the parties.

The IMO Maritime Safety Committee also consists of all the IMO Members and meets at least once a year. It considers any matter within the scope of the Organization concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, log-books and navigational records, marine casualty investigation, salvage and rescue, and any other matters directly affecting maritime safety.

The IMO Maritime Safety Committee provides machinery for performing any duties assigned to it by the IMO Convention, the IMO Assembly or the IMO Council, or any duty within the above scope which may be assigned to it by or under any other international instrument and accepted by the IMO. Decisions of the Maritime Safety Committee, and of its subsidiary bodies shall be adopted by a majority of the Members.

The IMO's Marine Environment Protection Committee consists of all the IMO Members and meets at least once a year. It addresses environmental issues under the scope of the organisation as regards the control and prevention of ship-source pollution covered by the MARPOL treaty, including oil, chemicals carried in bulk, sewage, garbage and emissions from ships to air, including air pollutants and greenhouse gas emissions. Other matters covered include ballast water management, anti-fouling systems, ship recycling, pollution preparedness and response, and identification of special areas and particularly sensitive sea areas.

The IMO Marine Environment Protection Committee provides machinery for performing any duties assigned to it by the IMO Convention, the IMO Assembly or the IMO Council, or any duty within the above scope which may be assigned to it by or under any other international instrument and accepted by the IMO. Decisions of the Marine Environment Protection Committee, and of its subsidiary bodies shall be adopted by a majority of the Members.

1.3. The envisaged act of the IMO's Maritime Safety Committee

On 4-11 November 2020, during its 102nd session (MSC 102), the Maritime Safety Committee is to approve an MSC-MEPC.5 Circular, which will set out the Model Agreement for Governments to use to authorise Recognised Organisations acting on their behalf. The Circular is to be approved jointly by the Maritime Safety Committee and the Marine Environment Protection Committee.

In 2016, the Maritime Safety Committee approved a new work programme output to review and amend the Model Agreement for the authorisation of recognised organisations acting on behalf of the Administration in order to bring it into line with the requirements of the Code for

Recognized Organizations (RO Code). The draft Model Agreement was debated at several sessions of IMO's Sub Committee on the Implementation of IMO Instruments and is now before the Committee for approval.

1.4. The envisaged act of the IMO's Marine Environment Protection Committee

On 16 – 20 November 2020, during its 75th session (MEPC 75), the Marine Environment Protection Committee is to approve the same MSC-MEPC.5 circular setting out the Model Agreement for Governments to use to authorise Recognised Organisations acting on their behalf.

2. POSITION TO BE TAKEN ON THE UNION'S BEHALF

2.1. Approval of the MSC-MEPC.5 Circular

During the 97th session of the Maritime Safety Committee (MSC 97), which took place in London 21 – 25 November 2016, a new output was approved to review and amend the Model Agreement for the authorisation of recognised organisations acting on behalf of the Administration (MSC.1/Circ.710–MEPC.1/Circ.307) to bring it into line with the requirements of the RO Code. The new output was included in the biennial agenda for 2016-2017 of the Sub-Committee on the Implementation of IMO Instruments and in the provisional agenda for the 4th session of the Sub-Committee on Implementation of IMO Instruments (III 4), with a target completion year of 2018.

III 4, which took place in London on 25 – 29 September 2017, decided to amend the Model Agreement using an IACS paper as a basis and formed a Correspondence Group to develop the text. III 5, which took place in London on 24-28 September 2018, finalised the draft Model Agreement and forwarded it to the 74th session of the Marine Environment Protection Committee (MEPC 74) and the 101st session of the Maritime Safety Committee (MSC 101) for approval.

MEPC 74 deferred consideration of the draft circular to MEPC 75 due to time constraints. MSC 101 debated the draft text, but due to strong objections from IACS that their proposed substantive amendments were not accepted, MSC 101 referred the draft with the proposed by IACS amendments back to the 6th session of the Sub-Committee on the Implementation of IMO Instruments (III 6) for consideration. III 6, which took place in London on 1 – 5 July 2019, reviewed the draft Model Agreement and the IACS proposals. While accepting their editorial proposals, it rejected the substantive proposals. III 6 then forwarded the draft Circular to MEPC 75 and MSC 102 for approval.

The Union should support the amendments to the IMO model agreement agreed by III 6. The new circular will supersede MSC/Circ.710 and MEPC/Circ.307, update the model agreement and bring it into line with the RO Code (resolutions MSC.349(92) and MEPC.237(65)). It will increase accuracy, transparency and accountability of both the flag administration and ROs at global level.

2.2. Relevant EU legislation and EU competence

The Model Agreement, currently set out in MSC/Circ.710 and MEPC/Circ.307, is implemented in EU law in Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations. Article 5 of Directive 2009/15/EC provides:

"1. Member States which take a decision as described in Article 3(2) shall set out a 'working relationship' between their competent administration and the organisations acting on their behalf.

2 The working relationship shall be regulated by a formalised written and non-discriminatory agreement (…)including at least: (a) the provisions set out in Appendix II of IMO Resolution A.739(18) on guidelines for the authorisation of organisations acting on behalf of the administration, while drawing inspiration from the Annex, Appendices and Attachment to IMO MSC/Circ.710 and MEPC/Circ.307 on a model agreement for the authorisation of recognised organisations acting on behalf of the administration. […]"

EU competence

The replacement of MSC/Circ.710 and MEPC/Circ.307 by the draft MSC-MEPC.5 Circular would affect EU law through the application of Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations.

The Union, therefore, has exclusive competence by virtue of the last limb of Article 3(2) TFEU and it is, thus, necessary to establish the position of the Union on the acts adopting the above mentioned amendments.

3. LEGAL BASIS

3.1. Procedural legal basis

3.1.1. 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.[2]

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

[2] Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraph 64.

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*'.[3]

3.1.2. Application to the present case

The IMO Marine Environment Protection Committee and the Maritime Safety Committee are bodies set up by an agreement, namely the Convention on the International Maritime Organization.

The act which the IMO Marine Environment Protection Committee and the Maritime Safety Committee are called upon to adopt constitute an act having legal effects. The envisaged act is capable of decisively influencing the content of the following EU legislation

– Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations.

This is because Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations requires Member State administrations to regulate their working relationship with Recognised Organisations by a formalised written and non-discriminatory agreement, which must draw inspiration from the model agreement contained in MSC/Circ. 710 and MEPC/Circ. 307.

Therefore, the new circular superseding MSC/Circ.710 and MEPC/Circ.307 would affect EU law through the application of Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

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

3.2. Substantive legal basis

3.2.1. 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.

3.2.2. Application to the present case

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

[3] Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

3.3. Conclusion

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

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COUNCIL DECISION

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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) Action by the Union in the sector of maritime transport should aim to protect the marine environment, human health and improve maritime safety.

(2) The Convention on the International Maritime Organization (IMO) entered into force on 17 March 1958.

(3) 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.

(4) Pursuant to Article 28(b) of the Convention on the IMO, the Maritime Safety Committee provides machinery for the performance of any duties assigned to it in accordance with that Convention, by the IMO Assembly or by the IMO Council, or any duty within the scope of that Article which may be assigned to the Maritime Safety Committee under any other international instrument and accepted by the IMO.

(5) Pursuant to Article 38(a) of the Convention on the IMO, the Marine Environment Protection Committee performs such functions as are or may be conferred upon the IMO by or under international conventions for the prevention and control of marine pollution from ships, particularly with respect to the adoption and amendment of regulations or other provisions.

(6) The International Convention for the Safety of Life at Sea ('SOLAS Convention') entered into force on 25 May 1980.

(7) Pursuant to Article VIII(b)(iii) of the SOLAS Convention, the IMO's Maritime Safety Committee may adopt amendments to the SOLAS Convention.

(8) The International Convention for the Prevention of Pollution from Ships ('MARPOL Convention') entered into force on 2 October 1983.

(9) Pursuant to Article 16(2)(c) of the MARPOL Convention, amendments thereto may be adopted by the appropriate body, in this case the Marine Environment Protection Committee.

(10) The Maritime Safety Committee, during its 102nd session from 4 to 11 November 2020 ('MSC 102') is to approve jointly with the Marine Environment Protection Committee an MSC-MEPC.5 Circular on Model Agreement for the authorisation of Recognised Organisations acting on behalf of the Administration.

(11) The Marine Environment Protection Committee, during its 75th session from 16 – 20 November 2020 ('MEPC 75') is to approve jointly with MSC 102 an MSC-MEPC.5 Circular on Model Agreement for the authorisation of Recognised Organisations acting on behalf of the Administration.

(12) It is appropriate to establish the position to be taken on the Union's behalf during MSC 102, as the approval of MSC-MEPC.5 Circular will be capable of decisively influencing the content of Union law, namely Directive 2009/15/EC of the European Parliament and of the Council[1].

(13) It is appropriate to establish the position to be taken on the Union's behalf during MEPC 75, as the approval of MSC-MEPC.5 Circular will be capable of decisively influencing the content of Union law, namely Directive 2009/15/EC of the European Parliament and of the Council.

(14) The approval of the MSC-MEPC.5 circular, which supersedes circulars MSC/Circ.710 and MEPC/Circ.307, will update the model agreement and bring it into line with the Code for Recognized Organizations (RO Code) (resolutions MSC.349(92) and MEPC.237(65)). It will contribute to increasing accuracy, transparency and accountability of both the flag administration and ROs at global level.

(15) Council Decision (EU) 2020/721 of 19 May 2020[2] should be amended to include reference to the approval of the MSC-MEPC.5 Circular.

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1 Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ L 131, 28.5.2009, p. 47).

2 Council Decision (EU) 2020/721 of 19 May 2020 on the position to be taken on behalf of the European Union within the International Maritime Organization's Marine Environment Protection Committee during its 75th session and within the International Maritime Organization's Maritime Safety Committee during its 102nd session as regards the adoption of amendments to regulations 2, 14 and 18 and appendices I and VI of Annex VI to the International Convention for the Prevention of Pollution from Ships, Parts A-1, B, B-1, B-2 to B-4 of Chapter II-1 of the International Convention for the Safety of Life at Sea, Parts A-1 and B-1 of the International Code of Safety for Ships Using Gases or Other Low-flashpoint Fuels and resolution A.658(16) on the use and fitting of retro-reflective materials on life-saving appliances (OJ L 171, 2.6.2020, p. 1–3)

(16) The Union's position is to be expressed by the Member States of the Union that are members of the IMO's Maritime Safety Committee and Marine Environment Protection Committee, acting jointly,

HAS ADOPTED THIS DECISION:

Article 1

Council Decision (EU) 2020/721 is hereby amended as follows:

"Article 1

The position to be taken on behalf of the Union within the International Maritime Organization's Marine Environment Protection Committee during its 75th session shall be to support the adoption of the amendments to regulations 2, 14 and 18 and appendices I and VI of Annex VI to the International Convention for the Prevention of Pollution from Ships, as laid down in the Annex to IMO document MEPC 75/3 and the approval of MSC-MEPC.5 Circular as laid down in Annex 8 to IMO Document III 6/15.

Article 2

1. The position to be taken on behalf of the Union within the International Maritime Organization's Maritime Safety Committee during its 102nd session shall be to support the adoption of the amendments to:

(a) Parts A-1, B, B-1, B-2 to B-4 of Chapter II-1 of the International Convention for the Safety of Life at Sea, as laid down in Annex 1 to IMO document MSC 102/3;

(b) Parts A-1 and B-1 of the International Code of Safety for Ships Using Gases or Other Low-flashpoint Fuels, as laid down in Annex 2 to IMO document MSC 102/3;

(c) resolution A.658(16) on the use and fitting of retro-reflective materials on life-saving appliances;

And the approval of the MSC-MEPC.5 Circular on Model Agreement for the authorisation of Recognised Organisations acting on behalf of the Administration."

Article 2

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President