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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	14825/23
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 rd 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 – Presidency compromise

In view of the Shipping Working Party meeting on 10 November 2023, delegations will find attached a Presidency compromise proposal.

Changes compared to the Commission proposal are indicated in **bold underline** (new text) and ~~strikethrough~~ (deleted text)¹.

General scrutiny and language reservation: all delegations.

¹ *The Presidency suggests aligning the text, as far as relevant, with the text of Council Decision (EU) 2021/2144 of 2 December 2021 (32nd session of IMO Assembly).*

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the International Maritime Organization during the 33rd session of ~~the~~ its 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~~²

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.~~ **Action by the Union in the sector of maritime transport should aim to improve maritime safety and to protect the marine environment and human health.**
- (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.~~

² Reservation by the Commission on the deletion of references to the resolution on “dark shipping”.

- (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 of the International Maritime Organization (IMO), ~~in~~ **during** its 33rd session from 27 November to 6 December 2023 (**'A 33'**), is **expected** 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 **International Safety Management Code ('ISM Code')** by Administrations, to the Non-exhaustive list of obligations under instruments relevant to the **IMO Instruments Implementation Code ('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 A 33 the 33rd 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 of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations³, Regulation (EC) No 336/2006 which incorporates the International Safety Management Code (ISM Code) in the Union legislation of the European Parliament and of the Council⁴, the Directive 2009/21/EC on compliance with flag State requirements of the European Parliament and of the Council⁵, the Regulation and Directive 2002/59/EC of the European Parliament and of the Council establishing a Community vessel traffic and monitoring system⁶, the Council Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine⁷ and the Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine⁸.
- (6) ~~Therefore, t~~ 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 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.

³ Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (OJ L 131, 28.5.2009, p. 11).

⁴ Regulation (EC) No 336/2006 of the European Parliament and of the Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95 (OJ L 64, 4.3.2006, p. 1).

⁵ Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).

⁶ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

⁷ OJ L 229, 31.7.2014, p. 13

⁸ OJ L 229, 31.7.2014, p. 1

- (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.~~
- (9a) The Union is neither a member of the IMO, nor a contracting party to the relevant conventions and codes. The Council should therefore authorise the Member States to express the position of the Union at A 33.**
- (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,~~ **The scope of this Decision should be limited to the content of the proposed amendments, to the extent that those amendments are capable of affecting Union common rules and fall under the exclusive competence of the Union. This decision should not affect the division of competences between the Union and the Member States,**

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf ~~in~~ **at** the 33rd session of the Assembly of the International Maritime Organization's (IMO's) Assembly shall be to agree to the amendments to: the Guidelines under the Harmonized System of Survey and Certification (HSSC), 2021, and ~~revoke~~ **the consequent revocation of** IMO Assembly resolution A.1156(32); ~~to the amendments to~~ the Guidelines on the implementation of the ISM Code by Administrations; **and** 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.~~

Article 2

1. The position **to be taken on the Union's behalf as set out** referred to in Article 1 **covers the amendments concerned to the extent that those amendments fall under the exclusive competence of the Union and to the extent that they may affect Union common rules.** It shall be expressed ~~by the Commission and~~ by the Member States ~~of the Union that~~ **which** are **all** members of the IMO's Assembly, acting jointly in the interests of the Union.
2. **Minor changes to the position referred to in Article 1 may be agreed upon without further decision of the Council.**

Article 2a

Member States are hereby authorised to give their consent to be bound, in the interests of the Union, by the amendments referred to in Article 1, to the extent that those amendments fall under the exclusive competence of the Union.

Article 3

This Decision **shall enter into force on the date of its adoption** is addressed to the Commission and the Member States.

Done at Brussels,

For the Council
The President
