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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	28 March 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, 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's Marine Environment Protection Committee and Maritime Safety Committee on the adoption of amendments to Annex II to the International Convention for the Prevention of Pollution from Ships, amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011, amendments to the International Life-Saving Appliance Code, amendments to Forms C, E and P of the appendix to the International Convention for the Safety of Life at Sea, and to the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels

Delegations will find attached document COM(2019) 159 final.

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EUROPEAN
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Brussels, 28.3.2019
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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Maritime Organization's Marine Environment Protection Committee and Maritime Safety Committee on the adoption of amendments to Annex II to the International Convention for the Prevention of Pollution from Ships, amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011, amendments to the International Life-Saving Appliance Code, amendments to Forms C, E and P of the appendix to the International Convention for the Safety of Life at Sea, and to the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the 74th session of the International Maritime Organization's Marine Environment Protection Committee (MEPC 74), which will take place in London 13 – 17 May 2019, and at the 101st session of the International Maritime Organization's Maritime Safety Committee (MSC 101), which will take place in London 5 – 14 June 2019, in connection with the envisaged adoption of amendments to MARPOL Annex II relating to cargo residues and tank washings of persistent floating products with a high viscosity and/or a high melting point, amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers (ESP Code), 2011, amendments to paragraph 6.1.1.3 of the International Life-Saving Appliance Code (LSA Code), amendments to paragraph 4.4.8.1 of the LSA Code, amendments to the Records of Equipment (Forms C, E and P of the appendix to SOLAS) and amendments to parts A and A-1 of the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels (IGF Code).

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on the International Maritime Organization (IMO)

The Convention on the International Maritime Organization (IMO) establishes the IMO, the purpose of which is to provide a forum for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade, and 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; and 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 Prevention of Pollution from Ships ('MARPOL'), 1973, which entered into force on 2 October 1983. The Union is not a party to MARPOL.

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.

The International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers (ESP Code), 2011, provides requirements for an enhanced programme of inspections during surveys of single-hull and double-hull bulk carriers and of single-hull and double-hull oil tankers, in accordance with the provisions of SOLAS regulation XI-1/2.

The International Life-Saving Appliance Code (LSA Code), provides international standards requirements for the life-saving appliances covered by Chapter III of the SOLAS Convention, including personal life-saving appliances, visual aids, survival craft, rescue boats, launching

and embarkation appliances and marine evacuation systems, line-throwing appliances; and general alarm and public address systems.

The purpose of the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels (IGF Code) is to provide an international standard for ships operating with gas or low-flashpoint liquids as fuel. The Code addresses all areas that need special consideration for the usage of the gas or low-flashpoint liquids as fuel and provides criteria for the arrangement and installation of machinery for propulsion and auxiliary purposes, using natural gas as fuel, which will have an equivalent level of integrity in terms of safety, reliability and dependability as that which can be achieved with a new and comparable conventional oil fuelled main and auxiliary machinery.

2.2. The International Maritime Organization

The International Maritime Organization (IMO) is the United Nations specialized 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 Organization is open to all States and all EU Member States are members of the IMO. The European Commission has held an observer status in the International Maritime Organisation (IMO) since 1974 on the basis of an Arrangement for Co-operation and Collaboration between the Inter-Governmental Maritime Consultative Organisation (IMCO)[1] and the Commission of the European Communities on matters of mutual interest to the parties.

The IMO Marine Environment Protection Committee consists of all the IMO Members and meets at least once a year. It addresses environmental issues under the scope if the Organization concerned with 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, 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.

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,

[1] The name was changed in 1982 to International Maritime Organization (IMO).

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.

2.3. The envisaged act of the IMO Marine Environment Protection Committee

On 13 – 17 May 2019, during its 74th session (MEPC 74), the Marine Environment Protection Committee is to adopt amendments to MARPOL Annex II relating to cargo residues and tank washings of persistent floating products with a high viscosity and/or a high melting point, to reduce the impact on the environment. The purpose of the envisaged amendments to MARPOL Annex II is to address substantial pollution caused by e.g. discharge of paraffin wax within the North Sea and the Baltic Sea coastal states over the past several years.

2.4. The envisaged act of the IMO Maritime Safety Committee

On 5 – 14 June 2019, during its 101st session (MSC 101), the Maritime Safety Committee is to adopt amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011 (ESP Code), amendments to the International Life-Saving Appliance Code (LSA Code), amendments to paragraph 4.4.8.1 of the LSA Code, amendments to the Records of Equipment (Forms C, E and P of the appendix to SOLAS) and amendments to parts A and A-1 of the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels (IGF Code).

2.4.1. The purpose of the envisaged amendments the ESP Code is to include editorial changes identifying all mandatory requirements and improving the tables and forms. The amendments will furthermore merge the editorial changes with new substantial requirements in order to deal with recent updates to the International Association of Classification Societies' (IACS) Unified Requirements (UR) Z10 series. The UR Z10 series deals with hull surveys of oil tankers, bulk carriers, chemical tankers, double hull oil tankers and of double skin bulk carriers. IACS Unified Requirements are resolutions adopted by IACS on matters directly connected to or covered by specific rule requirements and practices of classification societies and the general philosophy on which the rules and practices of classification societies are established. Subject to ratification by the governing body of each IACS Member Society, Unified Requirements shall be incorporated in the Rules and practices of the Member Societies, within one year of approval by the IACS General Policy Group. Unified Requirements are minimum requirements. Furthermore, the language used in the draft amendments is aligned with IMO nomenclature to avoid ambiguity and inconsistency.

2.4.2. The purpose of the envisaged amendments to the LSA Code is to ensure uniform implementation of paragraph 6.1.1.3 concerning manual launching of small rescue boats that are not part of a ship's survival craft.

2.4.3. The aim of the amendments to paragraph 4.4.8.1 of the LSA Code is to exempt lifeboats with two independent propulsion systems from being equipped with sufficient buoyant oars and their related items (thole pins, crutches or equivalent

arrangements) to make headway in calm sea. During inspections it had been noted that some lifeboats with two independent propulsion systems had not been provided with either paddles, oars or any other relevant arrangement to accommodate these and it was concluded that the relevant requirement of the LSA Code and MSC/Circ.980/Add.1 does not take into account lifeboats designed with two independent propulsion systems.

2.4.4. MSC 100 approved a draft Unified Interpretation indicating that "For a lifeboat equipped with two independent propulsion systems, where the arrangement consists of two separate engines, shaft lines, fuel tanks, piping systems and any other associated ancillaries, paragraph 4.4.8.1 of the LSA Code need not be applied. For all other aspects, the lifeboat should be in full compliance with paragraph 4.4.8 of the LSA Code".

The existing paragraph 4.4.8.1 of the LSA Code is replaced in order to align it with the draft Unified Interpretation approved by MSC 100.

2.4.5. The purpose of the envisaged amendments to the Records of Equipment (Forms C, E and P of the appendix to SOLAS) is to amend item 8.1 in Forms C, E and P in the appendix to the SOLAS Convention, by inserting a footnote so as to indicate that not all of the indicators listed are applicable to all ships and therefore can be deleted as appropriate. Generally, not all types of ships are installed with the indicators in question (rudder, propeller, thrust, pitch and operating model indicator).

2.4.6. The envisaged amendments to parts A and A-1 of the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels (IGF Code) aim at providing consistency to the IGF Code, regarding the existing requirements for ships using natural gas as fuel by introducing necessary amendments based on the experience gained on the application of the Code.

3. POSITION TO BE ADOPTED ON THE UNION'S BEHALF

3.1. Amendments to MARPOL Annex II requirements relating to the discharge requirements for tank washings containing high-viscosity and persistent floating products

During the 68th session of the Marine Environment Protection Committee (MEPC 68), which took place in London 11 – 15 May 2015, a new output on "Review of MARPOL Annex II requirements that have an impact on cargo residues and tank washings of high viscosity, solidifying and persistent floating products and associated definitions and preparation of amendments" was approved for inclusion in the biennial agenda of the Sub-Committee on Pollution Prevention and Response, with a target completion year of 2018.

The draft amendments to MARPOL Annex II were finalized at the 5th session of the Sub-Committee on Pollution Prevention and response (PPR 5), which took place in London 5 - 9 February 2018. The 73rd session of the Marine Environment Protection Committee (MEPC 73), which took place in London 22 – 26 October 2018, approved the draft amendments to MARPOL Annex II with a view to adoption at MEPC 74.

The draft amendments to MARPOL Annex II are set out in Annex 13 to IMO Document MEPC 73/19. Paragraph 11.12 of the MEPC 73 report (MEPC 73/19) indicates that the amendments are foreseen to be adopted at MEPC 74.

3.2. Amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011 (ESP Code)

The 5th session of the Sub-Committee on Ship Design and Construction (SDC 5), which took place in London 22 – 26 January 2018, recalled that the 4th session of the Sub-Committee on Ship Design and Construction (SDC 4), which took place in London 13 – 17 February 2017, had authorized the International Association of Classification Societies (IACS) and the Secretariat to analyse the 2011 ESP Code, with a view to proposing editorial changes to identify all mandatory requirements; improve the format of the tables and forms; and provide a report on the progress made for consideration at SDC 5.

SDC 5 agreed that all substantive provisions currently contained in footnotes in the 2011 ESP Code should be included in the main body of the new consolidated text. SDC 5 furthermore agreed to improve the format of tables and forms in the ESP Code. SDC 5 finally also agreed to merge the editorial changes with new substantial amendments to the 2011 ESP Code, proposed by IACS that deal with the recent updates to the IACS Unified Requirements (UR) Z10 series.

SDC 5 endorsed the proposal to submit the draft amendments to the 2011 ESP Code to the 99th session of the Maritime Safety Committee (MSC 99), which took place in London 16 -25 May 2018, for approval, with a view to subsequent adoption of the amendments at the 100th session of the Maritime Safety Committee (MSC 100) and entry into force on 1 July 2020.

MSC 99 considered the draft amendments to the 2011 ESP Code prepared by SDC 5 in accordance with the procedure for undertaking regular updates of the Code, and approved the draft amendments to the 2011 ESP Code with a view to adoption at MSC 100.

MSC 100, which took place in London 3 – 7 December 2018, considered the draft amendments, together with proposed modifications, and noted that the language used in the draft amendments was not in accordance with IMO nomenclature, i.e. "is to/are to" instead of "shall", which could be detrimental to the future development of the IMO regulations as it could result in ambiguity and inconsistency. Furthermore, it was noted that the draft amendments to the 2011 ESP Code should take into account the draft consolidated version of the ESP Code currently under development by the Sub-Committee on Ship Design and Construction.

Following discussion, the MSC 100 decided to hold the adoption of the draft amendments to the 2011 ESP Code in abeyance with a view to preparing a revised set of draft amendments to the 2011 ESP Code using "shall/should" instead of "is to/are to", as appropriate, for submission to MSC 101 with a view to adoption.

This item was included in Council Decision 2018/1601[2]. According to Article 3 (3) of that Council Decision, minor changes to the position to be taken on the Union's behalf in relation

[2] Council Decision (EU) 2018/1601 of 15 October 2018 on the position to be taken on behalf of the European Union at the International Maritime Organization during the 73rd session of the Marine

to the amendments in question to the 2011 ESP Code may be agreed upon without further decision of the Council. However, as the changes to the amendments to the ESP Code cannot be considered minor, this item is included again in this proposal for a Council Decision on the position to be taken on behalf of the European Union at the International Maritime Organization during the 101st session of the Maritime Safety Committee.

The draft MSC resolution on amendments to the 2011 ESP Code is set out in Annex [X] of the MSC 100 report [(MSC 100/XX/Add.X)]. Paragraph [10.20] of the MSC 100 report [(MSC 100/XX)] indicates that the amendments are foreseen to be adopted at MSC 101.

3.3. Amendments to paragraph 6.1.1.3 of the International Life-Saving Appliance Code (LSA Code)

The 96th session of the Maritime Safety Committee (MSC 96), which took place in London 11 – 20 May 2016, had agreed to include a new output on "Uniform implementation of paragraph 6.1.1.3 of the LSA Code" in the 2016-2017 biennial agenda of the Sub-Committee and the provisional agenda for SSE 4, with a target completion year of 2017. The output is aimed at developing amendments to paragraph 6.1.1.3 of the LSA Code, in order to facilitate its uniform implementation and, in particular, to allow the use of hand-operated mechanisms for launching rescue boats, which are not one of the ship's survival craft.

Concerns about the hazards that the draft amendment to the LSA Code would introduce if the launching phase of a rescue boat from the stowed position to the outboard position was to be allowed without the number of persons assigned to crew the rescue boat on board as well as views related to the scope of application of the amendment were discussed at the 4th session of the Sub-Committee on Ship Systems and Equipment (SSE 4), which took place in London 20 – 24 March 2017, and at the 5th session of the Sub-Committee on Ship Systems and Equipment (SSE 5), which took place in London 12 – 16 March 2018.

At the 100th session of the Maritime Safety Committee (MSC 100), which took place in London 3 – 7 December 2018, the Committee agreed to approve the draft amendments to the LSA Code, with a view to adoption at MSC 101. Notwithstanding this decision, the Committee invited the 6th session of the Sub-Committee on Ship Systems and Equipment, taking place in London 4 – 8 March 2019 to consider continued concerns about the draft amendments, with a view to advising MSC 101 prior to adoption of the amendments.

The draft amendments to paragraph 6.1.1.3 of the LSA Code are set out in Annex [x] of the MSC 100 report [(MSC 100/xx/Add.x)]. Paragraph [9.6] of the MSC 100 report [(MSC 100/xx)] indicates that the amendments are foreseen to be adopted at MSC 101.

3.4. Amendments to paragraph 4.4.8.1 of the Life Saving Appliance Code

At the fifth session of the Sub-Committee on Ship Systems and Equipment (SSE 5), which took place in London 12 – 16 March 2018, the Union successfully proposed a unified interpretation (UI) of the Life-Saving Appliance (LSA) Code Paragraph 4.4.8.1 and the Standardized Life-Saving Appliances Evaluation and Test Report forms

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Environment Protection Committee and the 100th session of the Maritime Safety Committee, on the adoption of amendments to regulation 14 of Annex VI to the International Convention for the Prevention of Pollution from Ships and to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011, OJ L 267, 25.10.2018, p. 6.

(MSC/Circ.980/Add.1, Section 4.4.1.2). MSC 100 approved the text of the draft UI and also approved further amendments to paragraph 4.4.8.1 of the LSA Code aimed at achieving consistency between the requirement of the Code and the UI.

The amendments to paragraph 4.4.8.1 of the International Life-Saving Appliance Code (LSA Code) are set out in Annex [x] of the MSC 100 report [(MSC 100/xx/Add.x)]. Paragraph [9.23] of the MSC 100 report [(MSC 100/xx)] indicates that the amendments to the LSA Code are foreseen to be adopted at MSC 101.

3.5. Amendments to the Records of Equipment (Forms C, E and P of the appendix to SOLAS)

The 100th session of the Maritime Safety Committee (MSC 100), which took place in London 3 – 7 December 2018, agreed to consider the amendments to the Records of Equipment (Forms C, E and P of the appendix to SOLAS) in line with the understanding that minor corrections/issues can be considered by the Committees on the agenda item "Any other business". Following consideration, MSC 100 approved the proposed draft amendments with a view to adoption at the 101st session of the Maritime Safety Committee (MSC 101).

The draft amendments to the Records of Equipment (Forms C, E and P of the appendix to SOLAS) are set out in Annex [x] of the MSC 100 report [(MSC 100/xx/Add.x)]. Paragraph [9.30] of the MSC 100 report [(MSC 100/xx)] indicates that the amendments are foreseen to be adopted at MSC 101.

3.6. Amendments to Parts A and A-1 of the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels (IGF Code)

The fourth session of the Sub-Committee on Carriage of Cargoes and Containers (CCC 4), which took place in London 11 – 15 September 2017, re-established the Working Group on Development of Technical Provisions for the Safety of Ships Using Low-flashpoint Fuels, to continue work on draft amendments to the IGF Code regarding fuel cells and the development of draft technical provisions for the safety of ships using methyl/ethyl alcohol as fuel. CCC 4 endorsed the draft amendments to parts A and A-1 of the IGF Code related to natural gas-specific requirements prepared by the Working Group and invited the 99th session of the Maritime Safety Committee (MSC 99), which took place in London 16 – 25 May 2018, to approve the amendments with a view to adoption at the 100th session of the Maritime Safety Committee (MSC 100).

MSC 99 considered the draft amendments to parts A and A-1 of the International Code of Safety for Ships using Gases or other Low-flashpoint Fuels (IGF Code) together with additional comments made on the draft amendments, including a suggestion to include alternative solution to protect against leakage from liquefied fuel pipes outside machinery space. Following the discussion, MSC 99 agreed to hold the approval of the draft amendments to parts A and A-1 of the IGF Code in abeyance and instructed the fifth session of the Sub-Committee on Carriage of Cargoes and Containers (CCC 5), which took place in London 10 - 14 September 2018, to reconsider the draft amendments to regulation 9.5.6 and report the outcome to MSC 100 as an urgent matter.

CCC 5 considered the draft amendments to regulation 9.5.6 of the IGF Code, and agreed that no further changes to regulation 9.5.6 were needed. CCC 5 thus agreed to invite MSC 100, which took place in London 3 – 7 December 2018, as an urgent matter, to approve the draft amendments to parts A and A-1 of the IGF Code, as contained in annex 1 to document

CCC 4/12, with a view to subsequent adoption at the 101st session of the Maritime Safety Committee (MSC 101).

MSC 100 concurred with CCC 5 that no further changes to regulation 9.5.6, regarding an alternative solution to protect against leakage, were needed. However, views were divided as regards the need to included additional text to ensure the applicability of leakage detection requirements for pipes carrying liquefied fuel. MSC 100 agreed to the text as prepared by CCC 4, an approved the amendments to parts A and A-1 of the IGF Code, with a view to adoption at MSC 101, while noting that further proposals could still be submitted at the adoption stage.

The draft amendments to Parts A and A-1 of the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels (IGF Code) are set out in Annex [x] of the MSC 100 report [(MSC 100/xx/Add.x)]. Paragraph [11.5] of the MSC 100 report [(MSC 100/xx)] indicates that the amendments are foreseen to be adopted at MSC 101.

3.7. Relevant EU legislation and EU competence

3.7.1. Amendments to regulation MARPOL Annex II

Directive 2005/35/EC of the European Parliament and of the Council on ship-source pollution and on the introduction of penalties for infringements incorporates international standards for ship-source pollution into EU law and seeks to ensure that persons responsible for illegal discharges are subject to adequate penalties. Polluting substances in the Directive are defined as substances covered by MARPOL Annexes I and II. Furthermore, Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues requires Member States to ensure the availability of port reception facilities adequate to meet the needs of ships normally using their ports and requires ships to deliver their waste, including cargo residues, to those facilities before departure, with the ultimate goal of reducing discharges of waste from ships at the sea. The Annex II tank washings qualify as cargo residues under this Directive. Directive 2000/59/EC also requires ships to pre-notify the next port of any waste and cargo residues it wishes to deliver, and what will be retained on board, as well as the storage capacity available.

Therefore, the amendments due to be adopted at MSC 101, which would introduce changes to MARPOL Annex II relating to cargo residues and tank washings of persistent floating products with a high viscosity and/or a high melting point, would affect EU law, through the application of Directive 2005/35/EC of the European Parliament and of the Council on ship-source pollution and on the introduction of penalties for infringements and Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues.

3.7.2. Amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011 (ESP Code)

Regulation (EU) No 530/2012 of the European Parliament and of the Council on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers aims to establish an accelerated phasing-in scheme for the application of the double-hull or equivalent design requirements of MARPOL 73/78, as defined in Article 3 of this Regulation, to single-hull oil tankers, and to ban the transport to or from ports of the Member States of heavy grade oil in single-hull oil tankers.

Regulation (EU) No 530/2012 makes the application of the IMO's Condition Assessment Scheme (CAS) mandatory to single hull oil tankers above 15 years of age. Article 5 requires such tankers to comply with the CAS, which is then defined in Article 6 as the Condition Assessment Scheme adopted by Resolution MEPC 94(46) of 27 April 2001 as amended by Resolution MEPC 99(48) of 11 October 2002 and by Resolution MEPC 112(50) of 4 December 2003. The Enhanced Programme of Inspections during surveys of Bulk Carriers and Oil Tankers or Enhanced Survey Programme (ESP) specifies how to undertake this intensified assessment. As CAS uses ESP as the tool to achieve its aim, any changes to the ESP inspections will be directly and automatically applicable through Regulation (EU) No 530/2012.

Therefore, the amendments due to be adopted at MSC 101, which would introduce changes to the ESP Code, would affect EU law, through the application of Regulation (EU) No 530/2012 of the European Parliament and of the Council on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers aims.

3.7.3. Amendments to paragraph 6.1.1.3 of the LSA Code

Launching appliances and winches are included in Commission Implementing Regulation (EU) 2018/773 of 15 May 2018 on design, construction and performance requirements and testing standards for marine equipment and repealing Implementing Regulation (EU) 2017/306. Reference is made in that Implementing Regulation to the LSA Code and to resolution MSC.81(70) in relation to items MED/1.21, 1.23, 1.24 and 1.25 as regards as launching appliances. This equipment therefore falls in the scope of Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC.

Therefore, the amendments due to be adopted at MSC 101, which would introduce changes to the LSA Code, would affect EU law through the application of Directive 2014/90/EU and Implementing Regulation (EU) 2018/778.

3.7.4. Amendments to paragraph 4.4.8.1 of the LSA Code

Lifeboats are included in Commission Implementing Regulation (EU) 2018/773 of 15 May 2018 on design, construction and performance requirements and testing standards for marine equipment and repealing Implementing Regulation (EU) 2017/306. Reference is made in that Implementing Regulation to the LSA Code and to resolution MSC/Circular 980 in relation to item MED/1.7. This equipment therefore falls in the scope of Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC.

Therefore, the amendments due to be adopted at MSC 101, which would introduce changes to the LSA Code, would affect EU law through the application of Directive 2014/90/EU and Implementing Regulation (EU) 2018/778.

3.7.5. Amendments to the Records of Equipment (Forms C, E and P of the appendix to SOLAS)

Article 6(2)(a)(i) of Directive 2009/45/EC on safety rules and standards for passenger ships applies SOLAS, as amended, to Class A passenger ships.

Therefore, the amendments due to be adopted at MSC 101, which would introduce changes to the Records of Equipment, would affect EU through the application of Directive 2009/45/EC.

3.7.6. Amendments to parts A and A-1 of the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels (IGF Code)

Article 6(2)(a)(i) of Directive 2009/45/EC on safety rules and standards for passenger ships applies SOLAS, as amended, to Class A passenger ships. The IGF Code is made mandatory for passenger ships through SOLAS. In addition, Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure requires Member States to ensure that LNG is available at EU core ports for seagoing ships as from the end of 2025. National policy frameworks have been finalized by EU Member States for the market development of alternative fuels and their infrastructure, with a particular focus on the different supporting measures and initiatives for the promotion and development of LNG refuelling points for sea going ships.

Therefore, the amendments due to be adopted at MSC 101, which would introduce changes to the LSA Code, would affect EU law through the application of Directive 2009/45/EC and of Directive 2014/94/EU.

3.7.7. EU competence

The amendments to MARPOL Annex II relating to cargo residues and tank washings of persistent floating products with a high viscosity and/or a high melting point would affect the application of EU law through the application of Directive 2005/35/EC and Directive 2000/59/EC.

The amendments to the 2011 ESP Code would affect EU law through the application of Regulation (EU) No 530/2012 of the European Parliament and of the Council on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers.

The amendments to paragraph 6.1.1.3 of the International Life-Saving Appliance Code (LSA Code) would affect the application of EU law through the application of Directive 2014/90/EU and Implementing Regulation (EU) 2018/778.

The amendments to the Unified Interpretation of paragraph 4.4.8.1 of the LSA Code would affect the application of EU law through the application of Directive 2014/90/EU and Implementing Regulation (EU) 2018/778.

The amendments to the Records of Equipment (Forms C, E and P of the appendix to SOLAS) would affect EU law through the application of Directive 2009/45/EC.

The amendments to parts A and A-1 of the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels (IGF Code) would affect EU law though the application of Directive 2009/45/EC and of Directive 2014/94/EU.

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.[3]

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*'.[4]

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

– Directive 2005/35/EC of the European Parliament and of the Council on ship-source pollution and on the introduction of penalties for infringements and Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues. This is because polluting substances are defined in Directive 2005/35/EC as substances covered by MARPOL Annexes I and II. Furthermore, Directive 2000/59/EU requires Member States to ensure the availability of port reception facilities adequate to meet the needs of ships normally using their ports, with the ultimate goal to reduce discharges of ship-generated waste and cargo residues into the sea, thereby enhancing the protection of the marine environment.

– Regulation (EU) No 530/2012 of the European Parliament and of the Council on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers. This is because Regulation (EU) No 530/2012 makes the application of the IMO's Condition Assessment Scheme (CAS) a requirement and CAS uses the Enhanced Survery Programme (ESP) as the tool to achieve its aim.

– Commission Implementing Regulation (EU) 2018/773 of 15 May 2018 on design, construction and performance requirements and testing standards for marine equipment and repealing Implementing Regulation (EU) 2017/306 and

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

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

Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC. This is because the Implementing Regulation (EU) 2018/773 makes reference to the LSA Code as regards launching appliances, and therefore that type of equipment falls within the scope Directive 2014/90/EU.

– Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships. This is because Directive 2009/45 establishes that passenger ships of Class A are to comply entirely with the requirements of the SOLAS Convention, as amended.

– Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships together with Directive 2014/94/EU of the European Parliament and of the Council on the deployment of alternative fuels infrastructure. Ths is because Directive 2009/45/EC establishes that passenger ships of Class A are to comply entirely with the requirements of the SOLAS Convention, as amended, and because Directive Directive 2014/94/EU requires Membes States to ensure that LNG is available at core EU ports for seagoing ships as from the end of 2025.

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 adopted on behalf of the Union. 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 sea 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) TFUE, in conjunction with Article 218(9) TFEU.

2019/0087 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Maritime Organization's Marine Environment Protection Committee and Maritime Safety Committee on the adoption of amendments to Annex II to the International Convention for the Prevention of Pollution from Ships, amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011, amendments to the International Life-Saving Appliance Code, amendments to Forms C, E and P of the appendix to the International Convention for the Safety of Life at Sea, and to the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels

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 and improve maritime safety.

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

(3) 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.

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

(6) 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.

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

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

(9) The Marine Environment Protection Committee, during its 74th session on 13 - 17 May 2019 ('MEPC 74') is to adopt amendments to Annex II to the MARPOL Convention.

(10) The Maritime Safety Committee, during its 101st session on 5 – 14 June 2019 ('MSC 101') is to adopt amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011 ('2011 ESP Code'), to the International Life-Saving Appliance Code ('LSA Code'), to the Records of Equipment (Forms C, E and P of the appendix to SOLAS) and amendments to parts A and A-1 of the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels ('IGF Code').

(11) It is appropriate to establish the position to be taken on the Union's behalf during MEPC 74, as the amendments to Annex II to the MARPOL Convention will be capable of decisively influencing the content of Union law, namely Directive 2005/35/EC of the European Parliament and of the Council[5] and Directive 2000/59/EC of the European Parliament and of the Council[6].

(12) It is appropriate to establish the position to be taken on the Union's behalf during MSC 101, as the amendments to the 2011 ESP Code will be capable of decisively influencing the content of Union law, namely Regulation (EU) No 530/2012 of the European Parliament and of the Council[7], as the amendments to the LSA Code will be capable of decisively influencing the contents of Union law, namely Commission Implementing Regulation (EU) 2018/773[8] and Directive 2014/90/EU of the European Parliament and of the Council[9], as the amendments to the SOLAS Convention will be capable of decisively influencing the contents of Union law, namely Directive 2009/45/EC of the European Parliament and of the Council[10], and as the amendments to the IGF Code will be capable of decisively influencing the contents of Union law,

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5 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

6 Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residue (OJ L 332, 28.12.2000, p. 81).

7 Regulation (EU) No 530/2012 of the European Parliament and of the Council of 13 June 2012 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers (OJ L 172, 30.6.2012, p. 3).

8 Commission Implementing Regulation (EU) 2018/773 of 15 May 2018 on design, construction and performance requirements and testing standards for marine equipment and repealing Implementing Regulation (EU) 2017/306 (OJ L 133, 30.5.2018, p. 1).

9 Directive 2014/90/EU of the European Parliament and of the Council 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (OJ L 257, 28.8.2014, p. 146).

10 Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (OJ L 163, 25.6.2009, p. 1).

namely Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships together with Directive 2014/94/EU of the European Parliament and of the Council[11].

(13) The amendments to Annex II to the MARPOL Convention should ensure reduction of the impact on the environment related to cargo residues and tank washings of persistent floating products with a high viscosity and/or a high melting point.

(14) The amendments to the 2011 ESP Code should include editorial changes to the Code, identifying all mandatory requirements and improving the tables and forms, as well as merge the editorial changes with new substantial requirements in order to deal with recent updates to the International Association of Classification Societies' Unified Requirements Z10 series.

(15) The amendments to paragraph 6.1.1.3 of the LSA Code should ensure uniform implementation concerning manual launching of small rescue boats that are not part of a ship's survival craft.

(16) The amendments to paragraph 4.4.8.1 of the LSA Code should ensure exemption for lifeboats with two independent propulsion systems from being equipped with sufficient buoyant oars and their related items to make headway in calm sea.

(17) The amendments to item 8.1. in Records of Equipment Forms C, E and P in the appendix to the SOLAS Convention should ensure clarity as regards the fact that not all of the indicators listed are applicable to all ships and therefore can be deleted as appropriate.

(18) The amendments to parts A and A-1 of the IGF Code should ensure consistency regarding the existing requirements for ships using natural gas as fuel by introducing necessary amendments based on the experience gained on the application of the Code.

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

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 74th session of the IMO's Marine Environment Protection Committee shall be to agree to the adoption of the amendments to Annex II to the International Convention for the Prevention of Pollution from Ships, relating to the discharge requirements for tank washings containing high-viscosity and persistent floating products, laid down in Annex 13 to IMO Document MEPC 73/19/add.1.

[11] Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1).

Article 2

The position to be taken on the Union's behalf in the 101st session of the IMO's Maritime Safety Committee shall be to agree to:

(a) the adoption of amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011 laid down in Annex [X] to IMO document [MSC 100/XX/Add.X];

(b) the adoption of the amendments to paragraph 6.1.1.3 of the LSA Code laid down in Annex [X] to IMO document [MSC 100/XX/Add.X];

(c) the adoption of the amendments to paragraph 4.4.8.1 of the LSA Code laid down in Annex [X] to IMO document [MSC 100/XX/Add.X];

(d) the adoption of amendments to item 8.1. in Records of Equipment Forms C, E and P in the appendix to the SOLAS Convention laid down in Annex [X] to IMO document [MSC 100/XX/Add.X];

(e) the adoption of the amendments to parts A and A-1 of the IGF Code laid down in Annex [X] to IMO document [MSC 100/XX/Add.X].

Article 3

1. The position to be taken on the Union's behalf, as set out in Article 1, shall be expressed by the Member States, which are all members of the IMO, acting jointly in the interests of the Union.

2. The position to be taken on the Union's behalf as et out in Article 2, shall be expressed by the Member States, which are all members of the IMO, action jointly in the interests of the Union.

3. Minor changes to the positions referred to in Articles 1 and 2 may be agreed upon without further decision of the Council.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council
The President