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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union during the 99th session of the International Maritime Organization's Maritime Safety Committee on the adoption of amendments to SOLAS regulations II-1/1 and II-1/8-1, the approval of relevant guidelines on computerised stability support for the master in case of flooding for existing passenger ships and on the adoption of amendments to the International Code for Application of Fire Test Procedures, 2010

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 99th session of the International Maritime Organization's Maritime Safety Committee in connection with the envisaged adoption of amendments to SOLAS regulations II-1/1 and II-1/8-1 and relevant guidelines on computerized stability support for the master in case of flooding for existing passenger ships and to the International Code for Application of Fire Test Procedures, 2010 (2010 FTP 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 Safety of Life at Sea ('SOLAS'), 1974, which entered into force on 25 May 1980. The Union is not a party to SOLAS.

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 Maritime Safety Committee 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

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

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.

2.3. The envisaged act of the IMO Maritime Safety Committee

On 16 to 25 May 2018, during its 99th session (MSC 99), the Maritime Safety Committee is to adopt amendments to SOLAS regulations II-1/1 and II-1/8-1 and relevant guidelines on computerized stability support for the master in case of flooding for existing passenger ships and to the International Code for Application of Fire Test Procedures, 2010 (2010 FTP Code).

The purpose of the envisaged amendments to SOLAS regulations II-1/1 and II-1/8-1 is to extend the requirement in SOLAS regulation II-1/8-1.3 regarding computerized stability support for the master in case of flooding to existing passenger ships.

The purpose of the envisaged amendment to the 2010 FTP Code is to remove the distinction on fire protection requirements in the Code between ships with less than 36 passengers and ships with more than 36 passengers, in order to clarify the application of requirements for exposed floor coverings in Annex 3, Table 1 of the 2010 FTP Code to passenger ships, so that the requirements will also apply to passenger ships with less than 36 passengers.

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

3.1. Amendments to SOLAS regulations II-1/1 and II-1/8-1 and relevant guidelines on computerized stability support for the master in case of flooding for existing passenger ships

During the 94th session of the Maritime Safety Committee (MSC 94), which took place in London 17 – 21 November 2014, Bahamas et al made a successful request for a new output (MSC 94/6/1) concerning amendments to SOLAS regulations II-1/1 and II-1/8-1.

Subsequently, the third session of the IMO Sub-Committee on Ship Design and Construction (SDC 3), which took place in London 18 – 22 January 2016, noted that the Working Group on Subdivision and Damage Stability had only been able to briefly discuss the proposal to extend the requirement in SOLAS regulation II-1/8-1.3 regarding computerized stability support for the master in case of flooding to existing passenger ships, which concerns support to the master with regularly updated information on the residual damage stability of the ship after a flooding incident.

While it had been expressed in the Working Group on Subdivision and Damage Stability that the proposed amendments to SOLAS regulation II-1/8-1.3 were sufficient to be considered for finalization at the 4th session of the IMO Sub-Committee on Ship Design and Construction (SDC 4), SDC 3 also noted that further consideration would be necessary regarding implementation of the draft revised Guidelines on operational information for masters of passenger ships for safe return to port by own power or under tow (MSC.1/Circ.1400) on existing passenger ships and invited submissions to SDC 4.

SDC 4, which took place in London 13 – 17 February 2017, having discussed how the applicability of SOLAS regulation II-1/8-1.3 should be implemented for existing passenger ships, endorsed the view that any limitations of applicability of the current guidelines, i.e.

MSC.1/Circ.1400, MSC.1/Circ.1532 and MSC.1/Circ.1229, should be addressed by means of developing a new set of guidelines on stability computers and shore-based support for passenger ships constructed before 1 January 2014.

SDC 4 agreed to the draft amendments to SOLAS regulations II-1/1 and II-1/8-1 related to computerized stability support for the master in case of flooding for existing passenger ships (SDC 4/16, annex 2), but was not able to decide on the procedure for entry-into-force of the proposed amendments, owing to the fact that the complexity of the criteria for stability computers in the new set of guidelines would have an impact on the date from which the new draft regulations for existing passenger ships could be applied.

The 98th session of the Maritime Safety Committee (MSC 98), which took place in London on 7 – 16 June 2017, approved the draft amendments to SOLAS regulations II-1/1 and II-1/8-1 with a view to adoption at MSC 99, subject to the requirement that the 5th session of the IMO Sub-Committee on Ship Design and Construction (SDC 5), would confirm the date from which the draft SOLAS regulation II-1/8-1.3 will be applied and finalize the draft guidelines on stability computers and shore-based support for passenger ships constructed before 1 January 2014. SDC 5, which took place in London on 22 – 26 January 2018, agreed that passenger ships constructed before 1 January 2014 shall comply with SOLAS Regulation II-1/8-1.3.1 not later than the first renewal survey after five years after the date of entry into force. SDC 5 furthermore agreed to submit the associated guidelines to MSC 99 for approval.

The amendments to SOLAS regulations II-1/1 and II-1/8-1 are set out in Annex 13 to IMO Document MSC 98/23/Add.1. Paragraph 10.9 of the MSC 98 report (MSC 98/23) indicates that the amendments are foreseen to be adopted at MSC 99.

3.2. Amendments to the 2010 FTP Code

The third session of the IMO Sub-Committee on Ship Systems and Equipment (SSE 3), which took place in London 14 – 18 March 2016, considered that the provisions on requirements for exposed floor coverings in Annex 3, Table 1 of the 2010 FTP Code, which apply to passenger ships carrying more than 36 passengers, should also apply to passenger ships carrying less than 36 passengers. SSE 3 endorsed the view that guidance on the requirements for exposed floor coverings applicable to passenger ships carrying more than 36 should also apply to passenger ships carrying less than 36 passengers. Subsequently, SSE 3 agreed to instruct the Working Group on Fire Protection to further consider the matter and advise the Sub-Committee accordingly.

With regard to the provisions of Annex 3, Table 1, of the 2010 FTP Code, and considering the view of the Working Group on Fire Protection SSE 3 agreed that Annex 3, Table 1 the 2010 FTP Code should also be applicable to passenger ships carrying less than 36 passengers and that the possible solution could be to delete the phrase "carrying more than 36 passengers".

However, this possible solution was not reported to the 97th session of the Maritime Safety Committee (MSC 97), which took place in London 21 – 25 November 2016 as SSE 3 had considered the matter under the agenda item on "Unified interpretation of provisions of IMO safety, security, and environment related conventions".

Instead MSC 98 considered the proposed amendments to the 2010 FTP Code and approved them with a view to adoption at MSC 99.

The amendments to the 2010 FTP Code are set out in Annex 25 of the MSC 98 report (MSC 98/23/Add.1). Paragraph 12.47 of the MSC 98 report (MSC 98/23) indicates that the amendments are foreseen to be adopted at MSC 99.

3.3. Relevant EU legislation and EU competence

3.3.1. Amendments to SOLAS regulations II-1/1 and II-1/8-1 and relevant guidelines on computerized stability support for the master in case of flooding for existing passenger ships

Article 6(2)(a)(i) of Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships establishes that new passenger ships of Class A are to comply entirely with the requirements of the 1974 SOLAS Convention, as amended.

3.3.2. Amendments to the 2010 FTP Code

The 2010 FTP Code provides the international requirements for laboratory testing, type-approval and fire test procedures for products referenced under SOLAS chapter II-2 (which includes regulations on fire protection, fire detection and fire extinction). Amendments to the International Convention for the Safety of Life at Sea (SOLAS) to make the International Code for the Application of Fire Test Procedures (2010 FTP Code) mandatory came into force on 1 July 2012 (Resolution MSC.307(88)).

Article 6(2)(a)(i) of Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships establishes that new passenger ships of Class A are to comply entirely with the requirements of the 1974 SOLAS Convention, as amended. Furthermore, Chapter II-2, Part A and Part B of Annex I of Directive 2009/45/EC applies the Fire Safety Systems Code adopted by Resolution MSC.98(73), to Class B, C and D ships constructed on or after 1 January 2003.

3.3.3. EU competence

The amendments to SOLAS regulations II-1/1 and II-1/8-1 and relevant guidelines on computerized stability support for the master in case of flooding for existing passenger ships and to the 2010 FTP Code would affect EU law through the application of Directive 2009/45/EC.

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.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 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

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

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

4.1.2. Application to the present case

The IMO Maritime Safety Committee is a body set up by an agreement, namely the Convention on the International Maritime Organization.

The acts which the IMO Maritime Safety Committee is called upon to adopt constitute acts having legal effects. The envisaged acts are capable of decisively influencing the content of EU legislation, namely 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/EC establishes that new passenger ships of Class A are to comply entirely with the requirements of the 1974 SOLAS Convention, as amended, as set out in points 3.1 and 3.2 above.

Therefore, the amendments to SOLAS regulations II-1/1 and II-1/8-1 and relevant guidelines on computerized stability support for the master in case of flooding for existing passenger ships and to the 2010 FTP Code would affect EU law through the application of Directive 2009/45/EC.

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) TFEU, in conjunction with Article 218(9) TFEU.

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on the position to be taken on behalf of the European Union during the 99th session of the International Maritime Organization's Maritime Safety Committee on the adoption of amendments to SOLAS regulations II-1/1 and II-1/8-1, the approval of relevant guidelines on computerised stability support for the master in case of flooding for existing passenger ships and on the adoption of amendments to the International Code for Application of Fire Test Procedures, 2010

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 at improving 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. Pursuant to Article 28(b) of the Convention on the International Maritime Organization, the Maritime Safety Committee, a committee of the IMO, 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.
- (4) The International Convention for the Safety of Life at Sea ('SOLAS Convention') entered into force on 25 May 1980.
- (5) Pursuant to Article VIII(b)(iii) of the SOLAS Convention, the IMO's Maritime Safety Committee may adopt amendments to the SOLAS Convention.
- (6) The Maritime Safety Committee, during its 99th session on 16 – 25 May 2018 (MSC 99) is to adopt amendments to SOLAS regulations II-1/1 and II-1/8-1 and the relevant guidelines on computerised stability support for the master in the event of flooding for existing passenger ships and the International Code for Application of Fire Test Procedures, 2010 ('FTP Code').
- (7) It is appropriate to establish the position to be taken on the Union's behalf during MSC 99, as the amendments to SOLAS regulations II-1/1 and II-1/8-1 and the relevant guidelines on computerised stability support for the master in the event of flooding for existing passenger ships and the FTP Code will be capable of decisively influencing

the content of Union law, namely Directive 2009/45/EC of the European Parliament and of the Council⁴.

- (8) The amendments to SOLAS regulations II-1/1 and II-1/8-1 and the guidelines on computerised stability concerning support to the master by providing regularly updated information on the residual damage stability of the ship after a flooding incident should create operational guidelines for existing passenger ships.
- (9) The amendments to the FTP Code, concerning testing requirements for exposed floor coverings should provide that those provisions should also apply to passenger ships carrying less than 36 passengers.
- (10) 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, acting jointly.

HAS ADOPTED THIS DECISION:

Article 1

The positions to be taken on the Union's behalf in the 99th session of the IMO's Maritime Safety Committee shall be the following:

- (a) To agree to the amendments to SOLAS regulations II-1/1 and II-1/8-1 and the relevant guidelines laid down in Annex 13 to IMO Document MSC 98/23/Add.1 attached to this Decision;
- (b) To agree to the amendments to Table 1 of Annex 3 to the International Code for Application of Fire Test Procedures, 2010 laid down in Annex 25 to IMO Document MSC 98/23/Add.1 attached to this Decision.

Article 2

1. The positions referred to in points (a) and (b) of Article 1 shall be expressed by the Member States of the Union that are members of the IMO's Maritime Safety Committee, acting jointly.
2. Minor changes to the positions referred to in points (a) and (b) of Article 1 shall be agreed upon without further decision of the Council.

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President

⁴ 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).