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Proposal for a

COUNCIL DECISION

on the position to be adopted on behalf of the European Union at the 65th session of the Marine Environment Protection Committee of amendments to forms A and B of the International Oil Pollution Prevention Certificates and amendments to the Condition Assessment Scheme and at the 92nd session of the Maritime Safety Committee of amendments to the International Safety Management Code and amendments to SOLAS chapter III and the High Speed Craft Codes 1994 and 2000 concerning enclosed space entry and rescue drills

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The present Commission proposal concerns the establishment of the Union position in different IMO bodies in relation to the following:

- The adoption of amendments to Supplemental Forms A and B to the International Oil Pollution Prevention Certificate;
- The adoption of amendments to the Condition Assessment Scheme (Resolution MEPC.94(46)) (arising from the adoption of the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers 2011);
- The adoption of amendments to the International Safety Management Code;
- The adoption of amendments to SOLAS Chapter III and the High Speed Craft Codes 1994 and 2000
- The acceptance of those amendments in accordance with the respective provisions in the conventions concerned.

1.1. Supplemental Forms A and B to the International Oil Pollution Prevention Certificate

These supplemental forms to the IOPP Certificate are required to be kept on board of the ship. Form A is issued for ships other than oil tankers, while Form B is issued for oil tankers. The amendment concerns the deletion of an information requirement in both documents to record incinerator capacity, which has in the past been recorded on both forms in litres/hour (l/h). A later document, Resolution MEPC.187(59) in Annex 2, introduced a different measurement method (capacity in kW or kcal/h.). The use of both measurements was found to cause confusion in recording and inspections; moreover while the first was hard to apply, the second was found to serve no practical purpose. Accordingly the need to record incinerator capacity is to be deleted from both forms.

These changes are set out in Annex 13 in MEPC 64/23/Add.1. Para 7.32 of the MEPC 64 report (MEPC 64/23) indicates that these amendments will be adopted at MEPC 65.

1.2. Condition Assessment Scheme (Resolution MEPC.94(46)): amendments arising from the adoption of the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers 2011)

The Condition Assessment Scheme (CAS) sets out the framework for an intensified inspection of older ships. The Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers or Enhanced Survey Programme (ESP) specifies how to do this intensified inspection. As CAS uses ESP, so therefore CAS refers to ESP as a tool. The current amendment modifies CAS in order to refer to the latest (2011) ESP Code.

These changes are set out in Annex 16 in MEPC 64/23/Add.1. Para 11.13 of the MEPC 64 report (MEPC 64/23) indicates that these amendments will be adopted at MEPC 65.

1.3. The International Safety Management (ISM) Code

The International Safety Management Code aims to ensure safety at sea, prevention of human injury or loss of life, an avoidance of damage to the environment, in particular, to the marine environment, and to property. The amendments to be

adopted are the result of one of the many successful EU submissions to IMO on this subject, in this case STW 43/10¹. The changes will affect the ISM Code itself and were proposed by the 27 Member States and by the European Commission to enhance the Code's effectiveness.

The changes to the Code comprise the following

Part A, Section 6 (Resources and Personnel): insertion of a specific clarification (new para 6.2.1) that the Company should ensure appropriate manning of the ship through established procedures that encompass all aspects of maintaining safe and efficient operations on board.

Part A, Section 12 (Company verification, review and evaluation) insertion of a specific clarification (new para 12.2) in terms of company ownership, duties and responsibilities imposed by the Code, so that when a Company delegates certain ISM Code duties it still retains overall responsibility, with a need to verify periodically whether those entities to which it had delegated certain ISM Code related tasks are acting according to the ISM Code

Footnotes: Insertion of cross-referencing to relevant guidelines within the Code

These changes are set out in Annex 22 in MSC 91/22/Add.2. Para 11.9 of the MSC 91 report (MSC 91/22) indicates that these amendments will be adopted at MSC 92.

1.4. Amendments to SOLAS Chapter III and the High Speed Craft Codes of 1994 and 2000 as well as the Dynamically Supported Craft Code 1978 concerning enclosed space entry and rescue drills

SOLAS Chapter III concerns Life Saving Appliances and arrangements. The amendments at stake concern Regulation 19 on Emergency training and drills and aim to reduce fatalities linked with enclosed space entry by requiring crew members whose responsibilities include entry within enclosed spaces and rescue to participate in an enclosed space entry and rescue drill at least once every two months. Similar amendments are to be inserted in the High Speed Craft Codes of 1994 and 2000 and also in the Code of Safety for Dynamically Supported Craft.

The amendments concerning the High Speed Craft Codes 1994 and 2000 are contained respectively in Annexes 30 and 31 in MSC 91/22/Add.2. Para 13.7 of the MSC 91 report (MSC 91/22) indicates that these amendments will be adopted at MSC 92.

The amendments concerning the Code of Safety for Dynamically Supported Craft (DSC Code) are set out in submission MSC 92/3/1 on Consequential amendments to the 1979, 1989 and 2009 MODU Codes and the DSC Code dated 22 February 2013 and introduced by the IMO Secretariat. Annex 4 of this submission contains a draft MSC 92 Resolution to amend the DSC Code. Para. 13.9 of the MSC 91 report (MSC 91/22) indicates that this amendment will be adopted at MSC 92. Under Resolution A.373(X), the DSC Code may be amended by the Maritime Safety Committee as may be necessary. This is an amendment which is made, consequential to similar amendments being made in the other related Codes.

¹ STW 43/10 Improving the effectiveness of implementation of the International Safety Management Code

1.5. Adoption of the Amendments

1.5.1. *Adoption of amendments to the Supplemental Forms A and B of the International Oil Pollution Prevention Certificate and to the Condition Assessment Scheme*

These amendments were approved at the 64th session of the Marine Environment Protection Committee meeting between 1-5 October 2012 and are to be submitted for adoption to the 65th session of that Committee meeting between 13-17 May 2013.

1.5.2. *Adoption of amendments to the ISM Code, to SOLAS Chapter III, the High Speed Craft Codes 1994 and 2000 as well as the Code of Safety for Dynamically Supported Craft.*

The amendments for SOLAS Chapter III, and the High Speed Craft Codes of 1994 and 2000 were approved at the 91st session of the Maritime Safety Committee meeting between 26 – 30 November 2012 and are to be submitted for adoption to the 92nd session of that Committee meeting between 12-20 June 2013.

The consequential amendments to the DSC Code were noted at the 91st session of the Maritime Safety Committee meeting between 26 – 30 November 2012 and have been included in a draft MSC Resolution set out in Annex 4 of Submission MSC 92/3/1 by the IMO Secretariat is to be submitted for adoption to the 92nd session of that Committee meeting between 12-20 June 2013.

Acceptance and entry into force.

Once approved and adopted by the competent IMO Committee, as appropriate, the amendments will be submitted to the respective contracting parties in order for these to express their consent to be bound by the said amendments.

1.6. Relevant EU legislation

1.6.1. *Supplemental Forms A and B of the International Oil Pollution Prevention Certificate*

Directive 2009/16/EC² on port State Control aims to help to drastically reduce substandard shipping in the waters under the jurisdiction of Member States by (a) ensuring compliance with international and related EU legislation on maritime safety, maritime security, protection of the marine environment and on board living and working conditions; (b) establishing common criteria for control of ships by port State; (c) implementing a port State Control system based on the inspections performed within the EU and the Paris MOU region.

The amendments to these forms will have an impact on the requirements for inspection or more detailed inspections as laid down in Article 13(1) of Directive 2009/16/EC, in particular point a) therefore, according to which:

"1. On each initial inspection of a ship, the competent authority shall ensure that the inspector, as a minimum:

(a) checks the certificates and documents listed in Annex IV required to be kept on board in accordance with Community maritime legislation and Conventions relating to safety and security;"

This certificate is listed as item 7 within Annex IV of the Directive.

² OJ L 131, 28.5.2009, p.5

The amendments will result in a difference in the requirements provided in such forms which Port State Control Officers are obliged to check under Article 13(1) of Directive 2009/16/EC. The procedures for the control of ships referred to in Annex VI of the Directive as "Annex 1, 'Port State Control Procedures' to the Paris MOU" will also need to be amended as a result.

1.6.2. *Condition Assessment Scheme (Resolution MEPC.94(46)): amendments arising from the adoption of the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers 2011)*

Regulation (EU) No 530/2012³ 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.

This Regulation makes mandatory the application of the IMO's Condition Assessment Scheme (CAS) 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. While therefore this forthcoming amendment is not cited in the definition of the CAS given in Article 6 of the Regulation, it will have legal effect and the Regulation should be updated in order to take into account new developments at international level.

1.6.3. *The International Safety Management (ISM) Code*

Regulation (EC) 336/2006⁴ on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) 3051/95 aims to enhance the safety management and safe operation of ships as well as the prevention of pollution from ships. It does so by ensuring that companies operating those ships comply with the ISM Code by means of:

- (a) the establishment, implementation and proper maintenance by companies of the shipboard and shore-based safety management systems; and
- (b) the control thereof by flag and port State administrations.

Regulation (EU) 336/2006⁵ constituted the basis for the submission amending the ISM Code and will thus be affected by these amendments.

The ISM Code, although set out in Annex I of the Regulation, is also defined in Art. 2(1) as being 'in its up-to-date version'. Art. 5 requires the ships included in the scope of the Regulation under Art. 3(1) to comply with the requirements of Part A of the ISM Code. Hence the changes to be adopted at MSC 92 will have a direct legal effect on the Regulation.

³ OJ L 172, 30.6.2012, p.3

⁴ OJ L 64, 4.3.2006, p.1

⁵ OJ L 64, 4.3.2006, p.1

1.6.4. *Amendments to SOLAS Chapter III, the High Speed Craft Codes of 1994 and 2000 and the Dynamically Supported Craft Code concerning enclosed space entry and rescue drills*

Directive 2009/45/EC⁶ on safety rules and standards for passenger ships, as amended by Directive 2010/65/EC, aims to introduce a uniform level of safety of life and property on new and existing passenger ships and high-speed passenger craft, when both categories of ships and craft are engaged on domestic voyages, and to lay down procedures for negotiation at international level with a view to a harmonisation of the rules for passenger ships engaged on international voyages.

Article 6(4) of the Directive specifically applies the High Speed Craft Codes 1994 and 2000 to domestic high speed passenger craft. For those older crafts for which the High Speed Craft Codes do not apply, the Directive applies the previous Dynamically Supported Craft Code (Article 6(4)(a)(iii)).

Thus for both High Speed Craft Codes, the introduction of the new amendments to Chapter 18 (operational requirements) and in the case of the Dynamically Supported Craft (DSC) Code the equivalent amendments in Chapter 17 (operational requirements) will have a direct legal effect on EU law.

1.7. EU Competence

In view of the relevant EU legislation above, the Commission considers that the adoption of amendments to:

- (1) Supplemental Forms A and B of the International Oil Pollution Prevention Certificate;
- (2) Condition Assessment Scheme (Resolution MEPC.94(46)): amendments arising from the adoption of the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers 2011)
- (3) The International Safety Management (ISM) Code; and
- (4) Amendments to SOLAS Chapter III, the High Speed Craft Codes of 1994 and 2000 and the DSC Code concerning enclosed space entry and rescue drills

come under exclusive EU competence which the Union has acquired pursuant to Article 3 (2) TFEU, in so far as the adoption of the international instruments at stake may affect common rules or alter their scope. In this respect:

- (1) The amendment of the Supplemental Forms A and B of the International Oil Pollution Certificate will have a direct bearing on Directive 2009/16/EC as it will result in a difference in the requirements in such forms which Port State Control Officers are obliged to check under Article 13(1) of this Directive;
- (2) The amendment to the Condition Assessment Scheme (Resolution MEPC.94(46)) will preempt and predefine any future update of the CAS Scheme, which is applicable under Articles 5 and 6 of Regulation 530/2012, to take account of recent developments in Enhanced Survey Programme procedures;

⁶

OJ L 163, 25.6.2009, p.1

- (3) The amendments to the International Safety Management Code will directly affect the form of the Code that is implemented through Regulation (EC) 336/2006; and
- (4) The amendments to SOLAS Chapter III, to the High Speed Craft Codes 1994 and 2000 as well as to the DSC Code will have a direct effect on Directive 2009/45/EC.

Consistent with a well consolidated body of case law, even if the Union is not a member of the IMO, the Member States are not authorised to assume obligations likely to affect EU rules promulgated for the attainment of the objectives of the Treaties, unless they are authorised to do so by means of a Council decision, on a proposal by the Commission. The need for authorisation therefore extends to any such obligations, regardless of the subject-matter of the international instruments concerned.

1.8. Conclusion

The Commission therefore proposes a Council Decision on the position to be adopted on behalf of the European Union for the matters mentioned in para 1.7 above to be adopted at the 65th session of the Marine Environment Protection Committee and the 92nd session of the Maritime Safety Committee respectively.

Proposal for a

COUNCIL DECISION

on the position to be adopted on behalf of the European Union at the 65th session of the Marine Environment Protection Committee of amendments to forms A and B of the International Oil Pollution Prevention Certificates and amendments to the Condition Assessment Scheme and at the 92nd session of the Maritime Safety Committee of amendments to the International Safety Management Code and amendments to SOLAS chapter III and the High Speed Craft Codes 1994 and 2000 concerning enclosed space entry and rescue drills

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) Action by the European Union in the sector of maritime transport should aim to improve maritime safety,
- (2) Now approved by the IMO Marine Environment Protection Committee in its 64th session (MEPC 64, October 2012), the IMO Marine Environment Protection Committee meeting for its 65th session during 13-17 May 2013 is expected to adopt amendments to Supplemental Forms A and B of the International Oil Pollution Prevention Certificate and to the Condition Assessment Scheme (Resolution MEPC.94(46) (arising from the adoption of the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers 2011),
- (3) Now approved by the IMO Maritime Safety Committee meeting for its 91st session, amendments to the International Safety Management (ISM) Code and amendments to SOLAS Chapter III, the High Speed Craft Codes 1994 and 2000 and the Dynamically Supported Craft (DSC) Code are expected to be adopted by the IMO Maritime Safety Committee meeting for its 92nd session in June 2013.
- (4) Once adopted, the amendments to the above mentioned conventions will be submitted by the IMO Secretary-General to the respective contracting parties in order for these to express their consent to be bound by the said amendments.
- (5) The amendments to the Supplemental Forms A and B of the International Oil Pollution Prevention (IOPP) Certificate will delete an information requirement on incinerator capacity; the IOPP Certificate is covered by item 7 of Annex IV of Directive 2009/16/EC⁷ on port State control, as a form which Article 13(1) of the Directive obliges Member State's port State control officers to check.
- (6) The amendments to the Condition Assessment Scheme (CAS) for single hull oil tankers will modify the CAS to refer to the latest (2011) Enhanced Programme of

⁷ OJ L 131, 28.5.2009, p.5

Inspections during Surveys of Bulk Carriers and Oil Tankers or Enhanced Survey Programme (ESP). Regulation (EU) No 530/2012⁸ on the accelerated phasing-in of double hull or equivalent design requirements for single-hull oil tankers applies the CAS in its Articles 5 and 6.

- (7) The amendments to the ISM Code will introduce specific clarifications to the Code in terms of appropriate manning considerations and responsibility for ISM-related delegated tasks as well as the insertion of relevant footnotes. The ISM Code, although set out in Annex I of Regulation (EC) No 336/2006⁹ on the implementation of the ISM Code and repealing Council Regulation no. 3051/95, is also defined in Art. 2(1) as being 'in its up-to-date version'. Art. 5 requires that ships covered by this Regulation to comply with the requirements of Part A of the ISM Code. Hence the changes to be adopted at MSC 92 will have a direct legal effect on the Regulation.
- (8) The amendments to SOLAS Chapter III and more particularly to the High Speed Craft Codes of 1994 and 2000 as well as to Dynamically Supported Craft Code will introduce within Regulation 19 of SOLAS, Chapter 18 of the High Speed Craft Codes and Chapter 17 of the DSC Code an obligation for rescue training for those crew members with responsibilities for working in enclosed spaces. Directive 2009/45/EC¹⁰ on safety rules and standards for passenger ships, as amended by Directive 2010/65/EC, specifically applies the High Speed Craft Codes 1994 and 2000 to domestic high speed passenger craft. For older crafts for which the High Speed Craft Codes do not apply, the Directive applies the previous DSC Code.
- (9) The aforementioned amendments to be adopted at MEPC 65 and MSC 92 can be considered positive developments and hence should be given the Union's support.
- (10) The European Union is neither a member of the IMO nor a contracting party to the above-mentioned conventions. It is therefore necessary for the Council to authorize the Member States to express the position of the Union in the said IMO committees and express their consent to the bound by these amendments.

HAS ADOPTED THIS DECISION:

Article 1

(1) The position of the Union at the 65th session of the IMO Marine Environment Protection Committee shall be to agree to the adoption of the amendments to Forms A and B of the International Oil Pollution Protection Certificate and the amendments to the Condition Assessment Scheme (MEPC Resolution 94(46)), as approved by the said committee at its 64th session, as laid down in Annexes 13 and 16 of the IMO document MEPC 64/23/Add.1.

(2) The position of the Union at the 92nd session of the IMO Maritime Safety Committee shall be to agree to the adoption of the amendments to the ISM Code and its related guidelines and the introduction of a new training requirement for rescue in enclosed spaces within Chapter III of the SOLAS Convention 1974, the 1994 and 2000 High Speed Craft Codes and the Dynamically Supported Craft Code as approved by the Committee at its 91st session, as laid down in Annexes 22, 30 and 31 of the IMO document MSC 91/22/Add. 2, respectively in Annex 4 of the IMO document MSC 92/3/1.

⁸ OJ L 172, 30.6.2012, p.3

⁹ OJ L 64, 4.3.2006, p.1

¹⁰ OJ L 163, 25.6.2009, p.1

(3) The position of the Union as set out in paragraphs 1 and 2 of the present Article shall be expressed by the Member States, which are members of IMO, acting jointly in the interest of the Union.

(4) Formal and minor change to this position may be agreed without requiring that position to be amended.

Article 2

Member States are hereby authorized to give their consent to be bound, in the interest of the Union to this Decision, by the amendments referred to in Articles 1(1) and (2).

Article

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President