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Proposal for a

COUNCIL DECISION

on the position to be adopted on behalf of the European Union at the International Maritime Organization during the 93rd session of the Maritime Safety Committee on the adoption of amendments to SOLAS Regulations II-2/1, 2/3, 2/9.7, 2/13.4, 2/18, 2/20-1, 2/29, chapter III, the Life Saving Appliances Code and the 2011 Enhanced Survey Programme Code

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The present Commission proposal concerns the establishment of the Union position in the 93rd session of the IMO's Maritime Safety Committee in relation to the seven amendments set out individually in the following sub-headings:

1.1. **Amendments to SOLAS regulations II-2/3 and II-2/9.7 concerning fire resistance of ventilation ducts for new ships**

These amendments to Chapter II-2 of the SOLAS Convention introduce new requirements for ventilation systems in ships. They also aim to clarify the requirements for fitting fire and smoke dampers and for remotely controlled fire dampers. In addition new definitions for fire damper and smoke damper have been added.

These changes are set out in Annex 13 in MSC 92/26/Add.1. Para 8.6 of the MSC 92 report (MSC 92/26) indicates that these amendments will be adopted at MSC 93.

1.2. **Amendments to SOLAS regulation II-2/13.4 concerning additional means of escape from machinery spaces for new passenger and cargo ships**

Chapter II-2 of the SOLAS Convention contains requirements for means of escape in case of fire. These amendments to the SOLAS requirements aim to ensure that ladders and stairways with open treads in machinery spaces which are part of an escape route and not located in a protected enclosure shall be made of steel. Furthermore, requirements for the escape routes from workshops in machinery spaces are introduced.

These changes are set out in Annex 13 in MSC 92/26/Add.1. Para 8.17 of the MSC 92 report (MSC 92/26) indicates that these amendments will be adopted at MSC 93.

1.3. **Amendments to SOLAS regulation II-2/18 concerning helicopter landing areas on ro-ro passenger ships for new ships**

Chapter II-2 of the SOLAS Convention contains requirements for helicopter facilities. These amendments to the SOLAS Convention aim to introduce IMO Circular MSC.1/Circ.1431 – Guidelines for the approval of helicopter facility foam fire-fighting appliances - from 22 June 2012. The foam application system is thus required to be in accordance with these guidelines.

These changes are set out in Annex 13 in MSC 92/26/Add.1. Para 8.30 of the MSC 92 report (MSC 92/26) indicates that these amendments will be adopted at MSC 93.

1.4. **Amendments to SOLAS chapter III and associated requirements for periodic servicing and maintenance of lifeboats and rescue boats for all ships**

Chapter III of the SOLAS Convention contains requirements for life saving appliances. These amendments to the SOLAS Convention aim to make the requirements for periodic servicing and maintenance of lifeboats and rescue boats mandatory.

These changes are set out in Annex 31 in MSC 92/26/Add.2. Para 13.16 of the MSC 92 report (MSC 92/26) indicates that these amendments will be adopted at MSC 93.

1.5. **Amendments to the Life-Saving Appliances (LSA) Code concerning lifejackets Reference Test Devices (RTDs) - with associated Revised Recommendations on**

testing of life-saving appliances and Guidelines for validating the construction of a completed adult reference test device

The IMO Life Saving Appliances (LSA) Code contains requirements for life saving appliances. These amendments to the LSA Code introduce new requirements for lifejacket Reference Test Devices.

These changes are set out in Annex 34 in MSC 92/26/Add.2. Para 13.27.1 of the MSC 92 report (MSC 92/26) indicates that these amendments will be adopted at MSC 93.

1.6. Amendments to SOLAS regulation II-1/29 concerning requirements for steering gear trials

Chapter II-1 of the SOLAS Convention contains requirements for steering gear and sets out the means by which compliance may be demonstrated. These amendments to SOLAS provide an alternative means of demonstrating compliance, where it is impracticable to do so by sea trials with the ship at its deepest seagoing draught. .

These changes are set out in Annex 35 in MSC 92/26/Add.2. Para 13.29 of the MSC 92 report (MSC 92/26) indicates that these amendments will be adopted at MSC 93.

1.7. Amendments to the 2011 Enhanced Survey Programme (ESP) Code, mainly to bring this in line with practices of the classification societies/Recognized Organizations.

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 undertake such an intensified inspection. As the CAS uses the ESP to achieve its aim, the CAS refers to the ESP as a tool to do so. These amendments to the ESP Code aim to bring the ESP in line with current practices.

These changes are set out in Annex 36 in MSC 92/26/Add.2. Para 13.33 of the MSC 92 report (MSC 92/26) indicates that these amendments will be adopted at MSC 93.

2. ADOPTION OF THE IMO AMENDMENTS

2.1. Adoption of amendments to SOLAS Regulations II-2/1, 2/3, 2/9.7, 2/13.4, 2/18, 2/20-1, 2/29, chapter III, the Life Saving Appliances Code and the 2011 Enhanced Survey Programme Code

These amendments were approved at the 92nd session of the Maritime Safety Committee meeting between 12-21 June 2013 and are to be submitted for adoption to the 93rd session of that Committee meeting between 14-23 May 2014.

2.2. Acceptance and entry into force.

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

3. RELEVANT EU LEGISLATION AND EU COMPETENCE

3.1. Amendments to SOLAS regulations II-2/3 and II-2/9.7 concerning fire resistance of ventilation ducts for new ships

The Union already enacted through Chapter II-2 of Annex 1 of Directive 2009/45/EC¹ on safety rules and standards for passenger ships requirements on fire protection, detection and extinction. Regulation 12 of part A of this Chapter provides for specific requirements for ventilation ducts, which are derived from the same SOLAS provisions which are now expected to be amended. Moreover, Regulation 9 of Chapter II-2, part B, of the above mentioned Annex sets out comprehensive and detailed requirements concerning construction materials to be used for ventilation ducts within different parts of the passenger ship depending on its class. These amendments to SOLAS Chapter II-2, part C, Regulation 9, replace the entire paragraph 7 on ventilation systems, covering both the definition and testing for duct penetrations, including special arrangements for passenger ships carrying more than 36 passengers.

As a result, the requirements provided in Directive 2009/45/EC on ventilation ducts would need to be revised would the above amendments be adopted. This concerns, for example, the duct penetration provisions in the Directive's Chapter II-2 of Annex 1, Part A, Regulation 12, and the ventilation systems for ships carrying more than 36 passengers in Part B, Regulation 9.

Therefore, the amendments to SOLAS to be adopted may affect the requirements provided in Directive 2009/45/EC on ventilation ducts.

3.2. Amendments to SOLAS regulation II-2/13.4 concerning additional means of escape from machinery spaces for new passenger and cargo ships

The Union already enacted through Chapter II-2 of Annex 1 of Directive 2009/45/EC requirements on the means of escape from machinery spaces for passenger ships, in particular Regulation 6 of Part B (Fire Safety Measures) of this chapter, which are derived from the same SOLAS provisions which are now expected to be amended.

As a result, the requirements provided in Directive 2009/45/EC on means of escape, would need to be revised would the above mentioned amendments be adopted, taking into account the specific provisions applicable for the bulkhead deck and on escape from machinery control rooms.

Therefore, the amendments to SOLAS to be adopted may affect the requirements provided in Directive 2009/45/EC on means for escape from machinery spaces for new passenger ships .

3.3. Amendments to SOLAS regulation II-2/18 concerning helicopter landing areas on ro-ro passenger ships for new ships

The Union already enacted through Chapter II-2 of Annex 1 of Directive 2009/45/EC requirements on the provision of helicopter landing areas. In particular, Regulation 18, Part B of this chapter provides that "*ships equipped with helidecks shall comply with the requirements of Regulation 18 of Part G of the SOLAS Chapter II-2, as revised per 1 January 2003*". These requirements are now expected to be amended.

¹ OJ L 163, 25.6.2009, p.1

As a result, the requirements provided in Directive 2009/45/EC on helicopter landing areas on ro-ro passenger ships for new ships would need to be revised would the above mentioned amendments be adopted.

Therefore, the amendments to SOLAS to be adopted may affect the requirements provided in Directive 2009/45/EC on helicopter landing areas, by framing any revisions of such rules.

3.4. Amendments to SOLAS chapter III and associated requirements for periodic servicing and maintenance of lifeboats and rescue boats for all ship

The Union already enacted through Regulation 12 of Chapter III of Annex 1 of Directive 2009/45/EC on safety rules and standards for passenger ships requirements on the operational readiness, maintenance and inspection of life-saving appliances. Regulation 12.2 provides that that *"maintenance and inspections of life-saving appliances shall be carried out in accordance with the requirements of SOLAS Regulation III/20."* Thus the Directive requires compliance with the relevant SOLAS provisions which are now expected to be amended and any change will have a direct effect on EU law.

Therefore, the proposed amendment of the relevant SOLAS provisions will affect the requirements laid down in Directive 2009/45/EC on the operational readiness, maintenance and inspection of life-saving appliances.

3.5. Amendments to the Life-Saving Appliances (LSA) Code concerning lifejackets Reference Test Devices (RTDs) - with associated Revised Recommendations on testing of life-saving appliances and Guidelines for validating the construction of a completed adult reference test device

The Union already enacted through Chapter III of Annex 1 of Directive 2009/45/EC on safety rules and standards for passenger ships contains requirements on personal life saving appliances. In particular, Regulation 2.2 of this chapter indicates that all such appliances *"shall comply with...the LSA Code"*.

In addition, Article 5(1) of Directive 96/98/EC² on marine equipment provides that *"Equipment listed in Annex A.1 that is placed on board a Community ship ...shall meet the applicable requirements of the international instruments referred to in that Annex"*. In point A.1.1.4 in the table in Annex A.1, the applicable standard for life jackets is IMO Resolution MSC 48(66) (the LSA Code) and the applicable testing standards are those stipulated in IMO Resolution A.689(17) as amended.

Thus both Directives require compliance with the SOLAS provisions which are now expected to be amended and any change of these rules will have a direct effect on EU law.

Therefore, the proposed amendments to the LSA Code will affect the requirements laid down Directive 2009/45/EC and Directive 96/98/EC.

3.6. Amendments to SOLAS regulation II-1/29 concerning requirements for steering gear trials

The Union already enacted through Regulations 6 and 7 of Chapter II-1, Part C of Annex 1 of Directive 2009/45/EC requirements for steering gear trials, which are derived from and replicate the same provisions of SOLAS which are now expected to be amended.

² OJ L 46, 17.2.97, p.25

As a result, the requirements of Directive 2009/45/EC on main and auxiliary steering gear would need to be revised would the above mentioned amendments be adopted, taking into account the new SOLAS provisions.

Therefore, the amendments to SOLAS to be adopted may affect the requirements provided in Directive 2009/45/EC.

3.7. Amendments to the 2011 Enhanced Survey Programme (ESP) Code, mainly to bring this in line with practices of the classification societies/Recognised Organisations.

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. 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 be applicable through Regulation (EU) No 530/2012.

Therefore, the amendments due to be adopted at MSC 93, which would introduce changes to the ESP Code, would affect EU law, through the application of Regulation (EU) No 530/2012.

3.8. Summary

In view of the relevant EU legislation above, the Commission considers that the adoption of the seven above-cited amendments expected to be adopted at MSC 93 comes under EU exclusive 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.

Consistent with a well consolidated body of case law, even if the Union is not a member of 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

4. CONCLUSION

The Commission therefore proposes a Council Decision on the position to be adopted on behalf of the European Union for the amendments cited in paras 1.1 to 1.7 above to be adopted at the 93rd session of the Maritime Safety Committee respectively.

³ OJ L 172, 30.6.2012, p.3

Proposal for a

COUNCIL DECISION

on the position to be adopted on behalf of the European Union at the International Maritime Organization during the 93rd session of the Maritime Safety Committee on the adoption of amendments to SOLAS Regulations II-2/1, 2/3, 2/9.7, 2/13.4, 2/18, 2/20-1, 2/29, chapter III, the Life Saving Appliances Code and the 2011 Enhanced Survey Programme Code

THE COUNCIL OF THE EUROPEAN UNION,

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

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) The IMO Maritime Safety Committee (MSC) meeting at its 92nd session approved amendments to SOLAS Regulations II-2/1, 2/3, 2/9.7, 2/13.4, 2/18, 2/20-1, 2/29, Chapter III, the Life Saving Appliances Code and the 2011 Enhanced Survey Programme Code. Those amendments are expected to be adopted in the 93rd session of the MSC, to be held in May 2014.
- (3) The amendments to the SOLAS regulations II-2/3 and II-2/9.7 concerning fire resistance of ventilation ducts for new ships will introduce new requirements for ventilation systems in ships, including for passenger ship carrying more than 36 passengers. The provisions of Regulation 12, Part A and of Regulation 9, Part B of Chapter II-2 of Annex 1 of Directive 2009/45/EC⁴ on safety rules and standards for passenger ships on ventilation duct penetration provisions and on ventilation systems for ships carrying more than 36 passengers cover these issues and are derived from these SOLAS provisions which are now expected to be amended.
- (4) The amendments to SOLAS Regulation II-2/13.4 will introduce additional means of escape from machinery spaces for new passenger and cargo ships. The provisions of Regulation 6, Part B, Chapter II-2 of Annex 1 of Directive 2009/45/EC (Means of escape) covers these issues and are derived from the SOLAS provisions which are now expected to be amended.
- (5) The amendments to SOLAS Regulation II-2/18 concerning helicopter landing areas on ro-ro passenger ships for new ships will include a requirement for fire-fighting foam application systems to be in accordance with IMO Circular MSC.1/Circ.1431 of 22 June 2012 on Guidelines for the approval of helicopter facility foam fire-fighting appliances. Regulation 18, Part B, Chapter II-2 of Annex 1 of Directive 2009/45/EC provides that ships equipped with helidecks shall comply with the requirements of the

⁴ OJ L 163, 25.6.2009, p.1

SOLAS regulation as revised per 1 January 2003 which are now expected to be amended.

- (6) The amendments to SOLAS Chapter III, Regulation 20 and associated requirements for periodic servicing and maintenance of lifeboats and rescue boats for all ships aim to make these detailed requirements mandatory. Chapter III of Annex 1 of Directive 2009/45/EC provides that maintenance and inspections of life-saving appliances shall be carried out in accordance with the same requirements of SOLAS Regulation III/20, which are now expected to be amended.
- (7) The amendments to the Life-Saving Appliances (LSA) Code concerning lifejackets Reference Test Devices (RTDs) will introduce new requirements for RTDs. Regulation 2.2, Chapter III of Directive 2009/45/EC indicates that all such personal life-saving appliances comply with the LSA Code. In addition, Article 5(1) of Directive 96/98/EC⁵ on marine equipment stipulates that equipment listed in its Annex A.1 placed on board a Community ship meet the applicable requirements of the international instruments referred to in that Annex. In the table in Annex A.1, entry A.1.1.4, the applicable standard for life jackets is IMO Resolution MSC 48(66) – the LSA Code, which is now expected to be amended.
- (8) The amendments to SOLAS regulation II-1/29 concerning requirements for steering gear trials will introduce further requirements to demonstrate compliance during sea trials. Regulations 6 and 7, Part C, Chapter II-1 of Annex 1 of Directive 2009/45/EC are derived from and replicate the same provisions of SOLAS in Chapter II-1, Part C Regulation 29 on requirements for the main and auxiliary steering gear which are now expected to be amended.
- (9) The amendments to the 2011 Enhanced Survey Programme (ESP) Code bring it into line with the practices of classification societies. Articles 5 and 6 of Regulation (EU) No 530/2012⁶ on the accelerated phasing-in of double hull or equivalent design requirements for single-hull oil tankers make mandatory the application of the IMO's Condition Assessment Scheme (CAS) to single hull oil tankers above 15 years of age. 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 automatically be applicable through Regulation (EU) No 530/2012.
- (10) The Union is neither a member of the IMO nor a contracting party to the conventions and codes concerned. It is therefore necessary for the Council to authorise the Member States to express the position of the Union and express their consent to be bound by these amendments.

HAS ADOPTED THIS DECISION:

Article 1

1. The position of the Union at the 93rd session of the IMO Maritime Safety Committee shall be to agree to the adoption of the amendments to SOLAS Regulations II-2/3, 2/9.7, 2/13.4 and 2/18 as laid down in Annex 13 of the IMO document MSC 92/26.Add.1, and to the adoption of the amendments to SOLAS Regulations II-2/20-1, 2/29, chapter III and the Life Saving Appliances Code and the 2011 Enhanced

⁵ OJ L 46, 17.2.97, p.25

⁶ OJ L 172, 30.6.2012, p.3

Survey Programme Code as laid down in Annexes 31, 34, 35 and 36 respectively of the IMO document MSC 92/26/Add.2.

2. The position of the Union as set out in paragraph 1 shall be expressed by the Member States, which are members of IMO, acting jointly in the interest of the Union.
3. Formal and minor changes to this position may be agreed without requiring that position to be amended.

Article 2

Member States are hereby authorised to give their consent to be bound, in the interest of the Union, by the amendments referred to in Article 1(2).

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*