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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 during the 81st session of the Marine Environment Protection Committee and the 108th session of the Maritime Safety Committee on the adoption of amendments to the International Convention for the Prevention of Pollution from Ships (MARPOL), the Ballast Water Management Convention, the International Convention for the Safety of Life at Sea (SOLAS), the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code), the International Code of the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code), the International Life-Saving Appliance (LSA) Code, the International Code for Fire Safety Systems (FSS Code) and the Seafarers' Training, Certification and Watchkeeping (STCW) Code.

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf at the 81st session of the International Maritime Organization's Marine Protection Environment Committee (MEPC 81), scheduled to take place from 18 to 22 March 2024 and at the 108th session of the International Maritime Organization's Maritime Safety Committee (MSC 108), scheduled to take place from 15 to 24 May 2024.

During the MEPC 81, it is envisaged to adopt amendments to:

- (1) article V of Protocol I of the International Convention for the Prevention of Pollution from Ships (MARPOL);
- (2) Annex VI of MARPOL, and;
- (3) the Ballast Water Management Convention.

During the MSC 108, it is envisaged to adopt amendments to:

- (4) chapters II-1, II-2 and V of the International Convention for the Safety of Life at Sea (SOLAS), 1974;
- (5) the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code);
- (6) the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code);
- (7) the International Life-Saving Appliance (LSA) Code;
- (8) the International Code for Fire Safety Systems (FSS Code); and
- (9) section A-VI/1 of the Seafarers' Training, Certification and Watchkeeping (STCW) Code.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on the International Maritime Organization

The Convention on the International Maritime Organization (IMO) establishes the IMO. The IMO's purpose is to provide a forum for co-operation in the field of regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade. It furthermore aims 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. It also 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. The Union is not a party 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 and to Annex VI, which entered into force on 18 May 2005. 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.

2.2. The International Maritime Organization

The International Maritime Organization (IMO) is the United Nations' specialised 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 IMO is open to all States and all EU Member States are IMO members. The EU's relations with IMO are based notably on the Arrangement for Co-operation and Collaboration concluded between the Inter-Governmental Maritime Consultative Organisation (IMCO) and the Commission of the European Communities in 1974.

IMO's Maritime Safety Committee (MSC) 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, marine casualty investigation, salvage and rescue, and any other matters directly affecting maritime safety.

IMO's Marine Environment Protection Committee (MEPC) also consists of all the IMO Members and meets at least once a year. It addresses environmental issues under the scope of the Organization as regards 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 to air, 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.

Both IMO's Maritime Safety Committee and Marine Environment Protection Committee provide machinery for performing any duties assigned to them by the IMO Convention, the IMO Assembly or the IMO Council, or any duty within the above scope which may be assigned to them by or under any other international instrument and accepted by the IMO. Decisions of the Maritime Safety Committee and the Marine Environment Protection Committee, and of their subsidiary bodies, are adopted by a majority of their Members.

2.3. The envisaged acts of the IMO's Marine Environment Protection Committee

On 18 to 22 March 2024, during its 81st session, the Marine Environment Protection Committee is to adopt amendments to: article V of Protocol I of MARPOL, Annex VI of MARPOL and the Ballast Water Management Convention.

The purpose of the envisaged amendments to article V of Protocol I of MARPOL is to revise the reporting procedures for the loss of containers to avoid double reporting.

The purpose of the envisaged amendments to Annex VI of MARPOL on low-flashpoint fuels and other fuel oil related issues is to resolve the requirement for testing and including flashpoint information on the Bunker Delivery Note (BDN) for low-flashpoint fuels, which was inconsistent with the recent amendments to SOLAS chapter II-2 adopted at MSC 106. On the amendments to accessibility of the data in the IMO Ship Fuel Consumption Database (IMO DCS), and on inclusion of data on transport work and enhanced level of granularity in the IMO DCS, the purpose is to optimise the use of DCS to the benefit of shipping's decarbonisation policy-making.

The purpose of the envisaged amendments to the Ballast Water Management Convention is to promote the use of electronic record books under the Convention.

2.4. The envisaged acts of the IMO's Maritime Safety Committee

On 15 to 24 May 2024, during its 108th session, the Maritime Safety Committee is to adopt amendments to: chapters II-1, II-2 and V of SOLAS, the IGF Code, the 2011 ESP Code, the LSA Code, the FSS Code and section A-VI/1 of the STCW Code.

The purpose of the envisaged amendments to chapters II-1, II-2 and V of SOLAS, 1974 is respectively, to ensure safe towing for ships, to enhance the fire safety of passenger ships, including ro-ro passenger ships, and to simplify the processing of container loss reports.

The purpose of the envisaged amendments to the IGF Code is to enhance the safety of ships, including passenger ships, using natural gas as fuel.

The purpose of the envisaged amendments to the 2011 ESP Code is to clarify the Procedures for approval and certification of a firm engaged in thickness measurement of hull structures.

The purpose of the envisaged amendments to the LSA Code is to promote maritime safety by revising the lowering speed of survival craft and rescue boats for passenger ships, by ensuring a suitable in-water performance of lifejackets for the safety of seafarers and by increasing safety standards of single fall and hook systems with on-load release hooks.

The purpose of the envisaged amendments to the FSS Code is to enhance the fire safety of passenger ships, and in particular ro-ro passenger ships.

The purpose of the envisaged amendments to section A-VI/1 of the STCW Code is to ensure a safe workplace for the seafarers.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF IN THE 81ST SESSION OF THE MARINE ENVIRONMENT PROTECTION COMMITTEE

3.1. Amendments to article V of Protocol I of the International Convention for the Prevention of Pollution from Ships (MARPOL)

MSC 103 had agreed to include in its post-biennial agenda an output on "Development of measures regarding the detection and mandatory reporting of containers lost at sea that may enhance the positioning, tracking and recovery of such containers", with two sessions needed to complete the item, assigning the Sub-Committee on Carriage of Cargoes and Containers (CCC) as the coordinating organ.

CCC 8 agreed to establish a Working Group on Development of Measures Regarding the Detection and Mandatory Reporting of Containers Lost at Sea and instructed it, taking into account the comments made and decisions taken in plenary, to, among others, to prepare draft amendments to article V of Protocol I of the MARPOL Convention, based on an EU submission (CCC 8/11/1).

Having considered the report of the Working Group, CCC 8 agreed on the draft amendments to article V of Protocol I of the MARPOL Convention, with a view to concurrent adoption by MEPC.

The Union's position was to actively support these amendments as they had been included in an EU submission (CC 8/11/1 (Australia et al.)).

MEPC 80 approved the draft amendments to article V of Protocol I of MARPOL, having noted that MSC 107 had approved the related draft amendments to SOLAS chapter V, with a view to adoption at MEPC 81.

The Union's position was to actively support the draft amendments subject to the approval of the related draft amendments to SOLAS chapter V by MSC 107.

The Union should therefore support these amendments, as it is important to establish one single reporting system for the loss of containers, to avoid duplicative submission requirements and avoid confusion, which entails the risk of not reporting of containers lost at sea.

3.2. Amendments to Annex VI of MARPOL

With regard to amendments to MARPOL Annex VI related to low-flashpoint fuels and other fuel oil related issues:

MEPC 79, having adopted through resolution MEPC.362(79) amendments to MARPOL Annex VI to add flashpoint to the information to be included in the Bunker Delivery Note (BDN), invited interested Member States and international organizations to submit proposals to MEPC 80, with specific reference made to establishing an exemption for low-flashpoint fuels in regulation 18.4 of MARPOL Annex VI, to resolve the matter under existing output 3.7 (MEPC 79/15, paragraph 3.37).

MEPC 80, after taking into consideration the report of the Working Group on Air Pollution and Energy Efficiency, approved the draft amendments to regulations 2, 14, 18 and appendix I of MARPOL Annex VI, with a view to adoption at MEPC 81.

The Union's position was to refer the discussion of the amendments to the working group on air pollution so that they could be considered in detail.

The Union position should be to support these amendments, as to resolve the requirement for testing and including flashpoint information on the BDN for low-flashpoint fuels, which was inconsistent with the recent amendments to SOLAS chapter II-2 adopted at MSC 106.

With regard to amendments to MARPOL Annex VI on accessibility of the data in the IMO Ship Fuel Consumption Database (IMO DCS) and on inclusion of data on transport work and enhanced level of granularity in the IMO DCS:

At its seventy-eighth session, MEPC approved a dedicated workstream on the revision of the IMO Ship Fuel Oil Consumption Data Collection System (DCS), inviting interested Member States and international organizations to submit concrete proposals to a future session of ISWG-GHG (document MEPC 78/17, paragraph 7.120).

Following this, the Intersessional Working Group on GHG (ISWG-GHG) at its 13th session had discussed a proposal submitted in document ISWG-GHG 13/7 (Austria et al.) to amend the IMO DCS, looking into possible future changes of the IMO GISIS reporting module, including additional reporting parameters and enhanced transparency.

MEPC 79 noted a broad support to the proposal to include data on transport work, the possible use of innovative technologies and on the level of granularity of reported data and that, accordingly, ISWG-GHG 14 was instructed to further consider the draft amendments to Appendix IX of MARPOL Annex VI, using annex 1 to document ISWG-GHG 13/7 as a basis, and the co-sponsors of document ISWG-GHG 13/7 were invited to consult with those delegations that had expressed concerns to work on a possible revised proposal.

The ISWG-GHG 14 took note of the several submissions and invited MEPC 80 to note:

1. that there was a broad support within the Group for the inclusion of data on transport work and on enhanced level of granularity of reported data in the IMO ship fuel oil consumption DCS,

2. that concerns were expressed on various issues, such as, immaturity and timing of the proposed amendments, the tendency to overly complicate the CII mechanism, accessibility of data and transparency and that the Group was not in a position to conclude on these matters; and
3. to forward the proposals set out in documents ISWG-GHG 14/4, ISWG-GHG 14/4/1, ISWG-GHG 14/4/2, as well as the collation of proposed amendments set out in annex 3 of document MEPC 80/WP.6, to the Working Group on Air Pollution and Energy Efficiency expected to be established during MEPC 80 for further consideration with a view to finalization, taking into account comments made at this session.

The Group noted that this issue would not be reconsidered during ISWG-GHG 15 and that any further document on this issue should be submitted to MEPC 80.

During MEPC 80, the Working Group on Air Pollution and Energy Efficiency was established to discuss several topics, including proposed amendments to MARPOL Annex VI on the revision of the IMO ship fuel oil consumption DCS, using annex 3 to document MEPC 80/WP.6 as a basis, with a view to finalization of draft amendments to MARPOL Annex VI at that session.

MEPC 80 approved the draft amendments to Annex VI of MARPOL, with a view to adoption at MEPC 81.

The Union position should be to support these amendments, as they optimise the use of DCS to the benefit of shipping's decarbonisation policy-making and are a compromise amongst broader access to IMO DCS data and control thereof by the IMO Secretariat. On the one hand, analytical consultancies and research entities are granted access to DCS data subject to the approval of the IMO Secretariat and on the other, they provide the possibility for any company to disclose the DCS data of their ships to the general public on a voluntary basis.

3.3. Amendments to the Ballast Water Management Convention

During MEPC 80, the Ballast Water Review Group was established. It was instructed, among others, to consider the proposed guidance for the use of electronic record books under the Ballast Water Management Convention (BWM Convention) contained in the annex to document MEPC 79/4/10, and advise the Committee accordingly and depending on the outcome of the consideration of the proposed guidance for the use of electronic record books under the BWM Convention, to consider the proposed consequential amendments to the BWM Convention contained in document MEPC 79/4/9, and advise the Committee accordingly.

The working group finalized the draft Guidance for the use of electronic record books under the BWM Convention and invited MEPC 80 to adopt the draft MEPC resolution on Guidance for the use of electronic record books under the BWM Convention. In conjunction with the finalization of the draft guidance, the Group also addressed some issues with the proposed consequential amendments to regulations A-1 and B-2 of the Convention, relating to existing electronic record books that may not be aligned with the guidance and to the verification of entries by the master.

Following that, MEPC 80 considered and approved draft amendments to regulations A-1 and B-2 of the BWM Convention regarding the use of electronic record books under the Convention, with a view to adoption at MEPC 81.

The Union position should be to support these amendments, as they take one step closer to digitalisation by keeping electronic record books under the BWM Convention.

4. POSITION TO BE TAKEN ON THE UNION'S BEHALF IN THE 108TH SESSION OF THE MARITIME SAFETY COMMITTEE

4.1. Amendments to chapters II-1, II-2 and V of the International Convention for the Safety of Life at Sea (SOLAS), 1974

With regards to amendments to chapter II-1 of SOLAS, 1974:

MSC 103 agreed to entrust the Sub-Committee on Ship Design and Construction (SDC) with a new output on "Development of amendments to SOLAS regulation II-1/3-4 to apply requirements for emergency towing equipment for tankers to other types of ships", with a target completion year of 2023.

At SDC 8, the Union, together with Australia, Canada, Morocco, New Zealand and Vanuatu, submitted the document SDC 8/12/1 in support of this agenda item proposing to extend the scope of SOLAS regulation II-1/3-4 paragraph 1 (presently applicable only to tankers of not less than 20,000 tonnes deadweight) to all new ships other than tankers of 20,000 gross tonnage and above. On the other hand, China (SDC 8/12) proposed an amendment to SOLAS regulation II-1/3-4 applicable to ships, other than tankers, of more than 150,000 gross tonnage.

The Chair pointed out that the two submissions under this Agenda item were too far apart. Therefore, in view of the lack of time, the best way forward would be to defer the discussion to SDC 9.

SDC 9 established the Experts Group on Application of Emergency Towing Equipment for Tankers to Other Types of Ships and instructed it, taking into account the comments and decisions made in plenary, to finalize the draft amendments to SOLAS regulation II-1/3-4, based on document SDC 8/12/1. Following discussion and considering that a large majority expressed support for the proposal in document SDC 8/12/1, the Sub-Committee agreed to a threshold value of 20,000 GT and upwards for new ships requiring emergency towing arrangements. The Sub-Committee invited MSC 107 to approve the draft amendments to SOLAS regulation II-1/3-4 with a view to subsequent adoption (SDC 9/16, annex 9).

The Union's position was to support the amendments proposed by the Union in SOLAS regulation II-1/3-4 to extend the scope of SOLAS regulation II-1/3-4 paragraph 1 (presently applicable only to tankers of not less than 20,000 tonnes deadweight) to all new ships other than tankers of 20,000 gross tonnage and above.

MSC 107 approved draft amendments to SOLAS regulation II-1/3-4 relating to new requirements for all new ships other than tankers of not less than 20,000 GT to be fitted with emergency towing arrangements, with a view to adoption at MSC 108.

The Union's position should be to support these amendments so as to substantially increase safety and to ensure that all new ships other than tankers, in particular passenger ships, of 20,000 gross tonnage and above, can be safely towed in case of emergency.

With regards to amendments to chapter II-2 of SOLAS, 1974 concerning fire safety, in particular on passenger ships, and more specifically:

Prevention of fire and explosion - Regulation 4:

MSC 105 approved, and MSC 106 adopted, draft amendments to SOLAS chapter II-2 in relation to oil fuel suppliers who have failed to meet the flashpoint requirements, actions against oil fuel suppliers that have been found to deliver oil fuel that does not comply with minimum flashpoint requirements, and documentation of the flashpoint of the actual fuel batch when bunkering.

MSC 105 also approved the updated action plan and the establishment of the Correspondence Group on Development of Further Measures to Enhance the Safety of Ships Relating to the Use of Fuel Oil, to report to MSC 107, to continue the development of draft guidelines for ships to address situations where they have indicative test results suggesting that the oil fuel supplied may not comply with flashpoint requirements.

The Correspondence Group agreed to continue the development on a general SOLAS requirement that oil fuel should not jeopardize the ship's safety, similar to MARPOL Annex VI, regulation 18.3.1.1.3, based on annex 3 in MSC 107/6. The Group also discussed the concerns expressed in plenary on the reference "harmful to personnel". Having noted that the term "harmful to personnel" was used in MARPOL Annex VI, the Group agreed to use the same term in the draft SOLAS amendments. Finally, the Group agreed to the draft new SOLAS regulation II-2/4.2.1.9, as set out in annex 3 in MSC 107/WP.10, for approval by the Committee and subsequent adoption.

MSC 107 approved draft amendments to SOLAS regulation II-2/4 related to oil fuel parameters other than flashpoint, with a view to adoption at MSC 108.

The Union's position in MSC 107 was to continue discussing the work in a working group, since the correspondence group did not finalise this work.

The Union's position should be to support these amendments since they will enhance the safety of oil fuel usage, in particular on passenger ships.

Suppression of fire and Special requirements - Regulations 7, 9, 20 and 23:

MSC 97 agreed to the EU's proposed new output concerning fires on ro-ro decks of passenger ships based on a study on accidents occurring on ro-ro passenger ships, identifying 14 areas of possible interventions for improvement and amendment of the instruments.

The 6th session of the Sub-Committee on Ship Systems and Equipment (SSE) succeeded in finalising the draft interim guidelines which included several proposals which were a direct result of the two FIRESAFE studies. In addition, SSE 6 made good progress on developing draft amendments to the revised guidelines for the maintenance and inspection of fire protection systems and appliances (MSC.1/Circ.1432).

SSE 8 further developed the draft amendments to SOLAS chapter II-2 and the FSS Code for new and existing ro-ro passenger ships and re-established the Correspondence Group on Fire Protection to further progress the work intersessionally, with the terms of reference set out in paragraph 6.26 of document SSE 8/20, and instructed the Group to submit a report to this session.

SSE 9 agreed to the draft amendments to SOLAS chapter II-2 concerning fire safety on ro-ro passenger ships, as set out in annex 5 of SSE 9/20, with a view to approval by MSC 107 and subsequent adoption by MSC 108.

SSE 9 also noted that the Group had considered fire detection within control stations and remote service spaces on cargo ships and had agreed that the term "continuously manned central control station", as proposed by the Correspondence Group report (SSE 9/6), should be replaced by the term "all control stations and cargo control rooms". Subsequently, the Sub-Committee agreed to the draft amendments to SOLAS regulation II-2/7.5.5, as set out in annex 5 of SSE 9/20, with a view to approval by MSC 107 and adoption by MSC 108.

The Union's position in SSE 9 was to support in general the report of the Correspondence Group on Fire Protection (SSE 9/6) and propose that this document as well as document SSE 9/6/1 (Japan) are referred to the working group on fire protection for further detailed

discussion with a view to the finalisation of the amendments to SOLAS Chapter II-2 and the FSS Code at that session.

MSC 107 approved draft amendments to SOLAS chapter II-2 on fire safety of ro-ro passenger ships, as set out paragraph 14.16.2 of the MSC 107 report (MSC 107/20) and annex 33 of MSC 107/20/Add. 1, with a view to adoption at MSC 108.

The Union's position in MSC 107 was to support the draft amendment to SOLAS chapter II-2 but taking into account the modifications proposed by Japan (MSC 107/14/4).

The Union's position should be to support these amendments since they will present significant benefits to the safety of life at sea by enhancing the standards of fire safety of passenger ships, and in particular ro-ro passenger ships.

With regards to amendments to chapter V of SOLAS, 1974 concerning safety of navigation - Regulations 31 and 32:

MSC 103 had agreed to include in its post-biennial agenda an output on "Development of measures regarding the detection and mandatory reporting of containers lost at sea that may enhance the positioning, tracking and recovery of such containers", with two sessions needed to complete the item, assigning the Sub-Committee on Carriage of Cargoes and Containers (CCC) as the coordinating organ.

CCC 8 agreed to establish a Working Group on Development of Measures Regarding the Detection and Mandatory Reporting of Containers Lost at Sea and instructed it, taking into account the comments made and decisions taken in plenary, to, among others, to prepare draft amendments to chapter V of SOLAS, based on an EU submission (CCC 8/11/1).

CCC 8 finalised and agreed on the draft amendments to SOLAS chapter V, as set out in annex 7 of CCC 8/18, for submission to MSC 107 for approval and subsequent adoption. The Sub-Committee also endorsed the Working Group's views that the draft amendments should enter into force on 1 January 2026, provided that the amendments were adopted before 1 July 2024 in accordance with the ad hoc midterm amendment cycle agreed by MSC 104 (CCC 8/WP.5, paragraph 18).

The Union's position in CCC 8 was to actively support the proposal in CCC 8/11/1 (Australia et al.) and propose that it, together with documents CCC 8/INF.7 (Netherlands) and CCC 8/INF.9 (France), are referred for a technical discussion in the working group on development of measures regarding the detection and mandatory reporting of containers lost at sea.

MSC 107 approved the draft amendments to SOLAS chapter V with regard to the reporting of the loss of containers, with a view to adoption at MSC 108.

The Union should support these amendments because they will simplify the processing of container loss reports in order to comply with regulatory obligations, provide for a reporting requirement from the flag State to IMO, increase navigation safety and prevent pollution.

4.2. Amendments to the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code)

CCC 8 agreed to establish the Working Group on Amendments to the IGF Code and Review of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code) and instructed it, taking into account the comments made and decisions taken in plenary, to finalize several draft amendments to the IGF Code.

CCC 8 agreed to the draft amendments to the IGF Code, as set out in annex 3 of CCC 8/18, for submission to MSC 107 for approval and subsequent adoption. In this context, the Sub-Committee endorsed the Working Group's recommendation to issue an MSC circular on the

early implementation of the draft amendments to paragraphs 4.2.2 and 8.4.1 to 8.4.3 of the IGF Code, subject to adoption by MSC 108 (CCC 8/WP.4, paragraph 14).

The Union's position in CCC 8 was to support the establishment of a working group to finalise the amendments to the IGF Code as set out in the report of the Correspondence Group (CCC 8/3), as well as to consider documents CCC 8/3/1-3 (IACS) and CCC 8/3/4 (Republic of Korea), and of a working group on the development of safety provisions for new alternative fuels, in particular to finalize the draft interim guidelines for ships using LPG fuels and to further develop the draft interim guidelines for ships using hydrogen as fuel.

MSC 107 approved draft amendments to the IGF Code, with a view to adoption at MSC 108, together with an MSC circular on the early implementation of the draft amendments to paragraphs 4.2.2 and 8.4.1 to 8.4.3 of the IGF Code.

The Union should support these amendments because they will enhance the safety of ships, including passenger ships, using natural gas as fuel.

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

MSC 106 had adopted amendments to parts A and B of annexes A and B of the 2011 ESP Code, prepared by SDC 8 in accordance with the procedure for undertaking regular updates of the Code agreed by MSC 92, which exempts regular updates to the 2011 ESP Code from the four-year cycle for entry into force of SOLAS amendments (MSC 92/26, paragraph 13.31). The amendments should be deemed to have been accepted on 1 January 2024, and enter into force on 1 July 2024.

SDC 9 considered document SDC 9/6 (China), proposing to modify the Procedures for approval and certification of a firm engaged in thickness measurement of hull structures, so as to permit Administrations to exercise the right to audit a firm conducting thickness measurement of hull structures. Following consideration, the Sub-Committee agreed to a draft MSC resolution on Amendments to the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code), as set out in annex 3 of SDC 9/16, for submission to MSC 107 for approval and subsequent adoption.

The Union's position on the SDC 9 was to support the proposal.

MSC 107 approved draft amendments to the 2011 ESP Code, with a view to adoption at MSC 108.

The Union's position in MSC 107 was to support the proposal.

Therefore, the Union should support these amendments because they will clarify the Procedures for approval and certification of a firm engaged in thickness measurement of hull structures in the annexes of the 2019 amendments to the 2011 ESP Code, referring to the Administration rather than referring to an organization recognised by the Administration.

4.4. Amendments to the International Life-Saving Appliance (LSA) Code

With regards to the amendments to minimum and maximum lowering speed of survival craft and rescue boats (paragraphs 6.1.2.8 and 6.1.2.10 of LSA Code):

MSC 99 considered document MSC 99/20/2 (Japan) and agreed to include in its post-biennial agenda an output on "Development of amendments to the LSA Code to revise the lowering speed of survival craft and rescue boats for cargo ships", with two sessions needed to complete the item, assigning the SSE Sub-Committee as the coordinating organ (MSC 99/22,

paragraphs 20.14 to 20.18). The Committee also agreed that the amendments to be developed should apply to all cargo ships to which SOLAS chapter III applied and to all launching appliances using falls and winches; and the instrument to be amended was the LSA Code, paragraph 6.1.2.8.

SSE 9, having recalled that the output was limited to amendments to cargo ships only, noted the LSA Working Group's conclusion that the draft revised requirements for the minimum lowering speed of survival craft and rescue boats would have no effect on passenger ships, which had already a davit height limitation as per SOLAS regulation III/24. Therefore, the Sub-Committee invited MSC 107 to expand the application of the aforementioned draft amendments to chapter VI of the LSA Code for revised paragraphs 6.1.2.8 and 6.1.2.10 to passenger ships, so that the maximum lowering speed would also apply, noting that the Group had prepared the draft amendments so as to apply for both cargo and passenger ships.

Subsequently, the Sub-Committee agreed to a draft MSC resolution on amendments to the LSA Code for minimum and maximum lowering speed of survival craft and rescue boats, and check/monitoring sheet and the record format, as set out in annex 4 of SSE 9/20, with a view to approval by MSC 107 and subsequent adoption by MSC 108.

MSC 107 agreed to modify the draft amendments to paragraph 6.1.2.10 of the LSA Code as suggested in document MSC 107/14/5 and approved the draft amendments to the LSA Code (paragraphs 6.1.2.8 and 6.1.2.10), with a view to adoption at MSC 108.

The Union's position in MSC 107 was to support this decision as it will enhance the safety on passenger ships.

The Union's position should be to support the amendments since they promote maritime safety by revising the lowering speed of survival craft and rescue boats for passenger ships.

With regards to the amendments to lifejacket's in-water performance (paragraph 2.2.1.6.2 of LSA Code):

MSC 101 had included in the post-biennial agenda of the Committee an output on "Development of amendments to the LSA Code and resolution MSC.81(70) to address the in-water performance of SOLAS lifejackets", aiming to enhance the in-water performance of lifejackets to mitigate the risks associated with seafarers becoming immersed in water, with two sessions required to complete the item, assigning the Sub-Committee as the coordinating organ.

SSE 9 agreed to the draft amendments to chapter II of the LSA, as set out in annex 4 of SSE 9/20, with a view to approval by MSC 107 and subsequent adoption by MSC 108.

The Union's position in SSE 9 was to support that the relevant sections of SSE 9/3 (annexes 2 and 3 to the report of the LSA Correspondence Group) as well as documents submitted under this agenda item are referred to the LSA working group for detailed analysis with a view to finalisation at this session.

MSC 107 approved draft amendments to chapter II of the LSA Code concerning the in-water performance of lifejackets, with a view to adoption at MSC 108.

The Union's position was to support that the relevant sections of SSE 9/3 (annexes 2 and 3 to the report of the LSA Correspondence Group) as well as documents submitted under this agenda item are referred to the LSA working group for detailed analysis with a view to finalisation at this session.

The Union's position should be to support the amendments since they promote maritime safety by ensuring a suitable in-water performance of lifejackets for the safety of seafarers.

With regards to the amendments for single fall and hook systems in lifeboat fittings (paragraphs 4.4.7.6.8 and 4.4.7.6.17 in LSA Code)

MSC 99 considered document MSC 99/20/2 (Japan) and agreed to include in its post-biennial agenda an output on "Development of amendments to the LSA Code to revise the lowering speed of survival craft and rescue boats for cargo ships", with two sessions needed to complete the item, assigning the SSE Sub-Committee as the coordinating organ (MSC 99/22, paragraphs 20.14 to 20.18).

SSE 7 considered draft amendments to paragraph 4.4.7.6.17 of the LSA Code concerning single fall and hook systems with on-load release capability and agreed to the draft amendments, in principle (SSE 7/WP.3, annex 5).

MSC 106 considered document MSC 106/11/1 (Bahamas et al.), identifying an unforeseen consequence of the proposed deletion of paragraph 4.4.7.6.8 pertaining to off-load hooks, and agreed that further discussion was necessary by SSE 9. Additionally, the Committee redefined the scope of the output to include other sub-paragraphs of paragraph 4.4.7.6 of the LSA Code to provide the necessary clarity for consistent application of the requirements and rename it as "Amendments to the LSA Code concerning single fall and hook systems with on-load release capability".

SSE 9 agreed to draft amendments to paragraphs 4.4.7.6.8 and 4.4.7.6.17 (already agreed by SSE 7) of chapter IV of the LSA Code on single fall and hook systems, as set out in annex 4 of SSE 9/20, with a view to approval by MSC 107 and subsequent adoption by MSC 108. In this respect, the Sub-Committee agreed that solid hooks with a spring-loaded guard on the hook mouth should be deemed to meet the requirements of paragraph 4.4.7.6.8 of the LSA Code, as modified, where it resets automatically.

The Union's position in SSE 9 was to further discuss the relevant documents in the working group.

MSC 107 approved draft amendments to paragraphs 4.4.7.6.8 and 4.4.7.6.17 of the LSA Code concerning single fall and hook systems, with a view to adoption at MSC 108.

The Union's position was to support the amendments.

The Union's position should be to support the amendments in LSA Code since they promote maritime safety by increasing safety standards of single fall and hook systems with on-load release hooks by removing the exemptions provided in paragraph 4.4.7.6.17.

4.5. Amendments to the International Code for Fire Safety Systems (FSS Code)

MSC 97 agreed to the EU's proposed new output concerning fires on ro-ro decks of passenger ships based on a study on accidents occurring on ro-ro passenger ships, identifying 14 areas of possible interventions for improvement and amendment of the instruments.

SSE 6 succeeded in finalising the draft interim guidelines which included several proposals which were a direct result of the two FIRESAFE studies. In addition, SSE 6 made good progress on developing draft amendments to the revised guidelines for the maintenance and inspection of fire protection systems and appliances (MSC.1/Circ.1432). Eventually, MSC 101 approved the interim guidelines.

SSE 7 approved, in principle, the draft amendments to the FSS Code, chapters 7 and 9, bearing in mind that the correspondence group would further consider the issue of the additional requirements for linear heat detection system in the FSS Code.

SSE 8 further developed the draft amendments to SOLAS chapter II-2 and the FSS Code for new and existing ro-ro passenger ships and re-established the Correspondence Group on Fire

Protection to further progress the work intersessionally, with the terms of reference set out in paragraph 6.26 of document SSE 8/20, and instructed the Group to submit a report to this session.

SSE 9 agreed to draft amendments to the FSS Code, as set out in annex 6 of SSE 9/20, with a view to approval by MSC 107 and subsequent adoption by MSC 108, together with the adoption of the associated draft amendments to SOLAS.

The Union's position in SSE 9 was to support in general the report of the Correspondence Group on Fire Protection (SSE 9/6) and propose that this document as well as document SSE 9/6/1 (Japan) are referred to the working group on fire protection for further detailed discussion with a view to the finalisation of the amendments to SOLAS Chapter II-2 and the FSS Code at this session.

MSC 107 approved draft amendments to the FSS Code on fire safety of ro-ro passenger ships, with a view to adoption by MSC 108 together with the associated draft amendments to SOLAS.

The Union's position was to support these amendments.

The Union's position should be to support these amendments since they will present significant benefits to the safety of life at sea by enhancing fire safety of passenger ships, and in particular ro-ro passenger ships.

4.6. Amendments to the Seafarers' Training, Certification and Watchkeeping (STCW) Code

MSC 105 had confirmed that the Joint ILO/IMO Tripartite Working Group (JTWG) should consider the development of training provisions addressing bullying and harassment in the maritime sector, including Sexual Assault and Sexual Harassment (SASH), within its new terms of reference (MSC 105/20, paragraph 16.14.1) and instructed Sub-Committee on Human Element, Training and Watchkeeping (HTW) to develop and finalize, as a matter of priority, STCW training provisions addressing bullying and harassment in the maritime sector, including SASH, as part of the new output on "Comprehensive review of the 1978 STCW Convention and Code", taking into account the work to be done in coordination with JTWG.

HTW 9 agreed to the draft amendments to table A-VI/1-4 of the STCW Code to prevent and respond to bullying and harassment, including SASH, as set out in annex 7 of HTW 9/15, for approval by MSC 107 with a view to adoption by MSC 108. The Sub-Committee also agreed that the draft amendments should be considered by JTWG and referred back to HTW 10 for final consideration, before their adoption by the Committee.

The Union's position in HTW 9 was to support documents HTW 9/7/1 (United States) and HTW 9/7/8 (Bahamas et al.) on substance, taking into account HTW 9/7/5 (Republic of Korea) and confirm the importance of addressing the issue of harassment and psychological safety, while indicating that in line with MSC 105, the three documents should be discussed as a matter of priority in the working group before the general review is considered.

MSC 107 approved draft amendments to table A-VI/1-4 of the STCW Code to prevent and respond to bullying and harassment, including SASH, with a view to adoption at MSC 108. In this connection, the Committee noted the agreement during HTW 9 to also refer the above-mentioned draft amendments to the second meeting of the Joint ILO/IMO Tripartite Working Group to identify and address seafarers' issues and the human element (JTWG), for consideration and advice to MSC 108, before their adoption at that session.

The Union's position was to support the draft amendments.

The Union’s position should be to support these amendments as they will ensure a safe workplace for the seafarers by including in Section A-VI/1 on “Mandatory minimum requirements for safety familiarization, basic training and instruction for all seafarers” a new competence to “Contribute to the prevention of and response to bullying and harassment, including sexual assault and sexual harassment”.

5. RELEVANT EU LEGISLATION AND EU COMPETENCE

5.1. Amendments to article V of Protocol I of the International Convention for the Prevention of Pollution from Ships (MARPOL)

Directive 2002/59/EC, as amended, establishes a Community vessel traffic monitoring and information system¹. Article 17 requires that Member States take all appropriate measures to ensure that the master of a ship sailing within their search and rescue region/exclusive economic zone or equivalent, immediately reports to the coastal station responsible for that geographical area: “... (d) any slick of polluting materials and containers or packages seen drifting at sea.” The purpose is to make responsible authorities (affected coastal States) aware, so that timely measures can be taken. There is therefore already, at the EU level, a mandatory system (SafeSeaNet) in place for reporting lost containers. This incident reporting system has been established practice since 2012.

In addition, Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector² provides that Member States’ maritime accident investigation bodies are informed without delay by the responsible authorities and/or by the parties involved, of the occurrence of all casualties and incidents falling within the scope of the Directive. This includes the loss of containers at sea.

Therefore, the amendments to article V of Protocol I of the International Convention for the Prevention of Pollution from Ships (MARPOL) are capable of decisively influencing the requirements applicable under Directive 2002/59/EC and Directive 2009/18/EC .

5.2. Amendments to Annex VI of MARPOL

Directive (EU) 2016/802 relating to a reduction in the sulphur content of certain liquid fuels³ reflects the sulphur-in-fuel-related requirements and implementing provisions of the revised MARPOL Annex VI.

In addition, Regulation (EU) 2015/757 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport⁴ (EU MRV Regulation) establishes the legal framework for an EU system to monitor, report and verify (MRV) GHG emissions. The regulation aims to deliver robust and verifiable GHG emissions data and energy efficiency indicators, inform policy makers and stimulate the market uptake of energy efficient technologies and behaviours. It does so by addressing market barriers such as the lack of information. It entered into force on 1 July 2015.

The Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality (EU Climate Law)⁵ sets a binding Union climate target of a reduction of net greenhouse gas emissions—emissions after deduction of removals—by at least 55% by 2030 compared to

¹ OJ L 208, 5.8.2002, p. 10

² OJ L 131, 28.5.2009, p. 114

³ OJ L 132, 21.5.2016, p. 58

⁴ OJ L 123, 19.5.2015, p. 55

⁵ OJ L 243, 9.7.2021, p. 1

1990. It also includes the aim of climate neutrality by 2050 and an aspirational goal for net negative emissions after this time.

Based on the Commission's proposals of the *Fit for 55* package to reduce GHG emissions, the EU legislators adopted the following legal acts specifically targeting GHG emissions from the shipping sector:

- the revision of Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union⁶ and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system⁷ by the amending Directive (EU) 2023/959⁸ to extend the EU Emissions Trading System (ETS) to the maritime transport sector to apply as of 1 January 2024 (together with the necessary amendments to the EU MRV Regulation⁹, to revise monitoring and reporting rules, also through the revision of the relevant implementing and delegated acts).
- Regulation (EU) 2023/1805 focuses on the use of renewable and low-carbon fuels in the maritime sector¹⁰ (FuelEU Maritime Regulation) and mandates the uptake thereof by ships calling at EU ports to apply as of 1 January 2025.

Compliance with the new obligations stemming from the extension of the EU Emission Trading System (ETS) to maritime transport and the FuelEU Maritime Regulation will build on the monitoring, reporting, and verification system established by the EU MRV Regulation.

These EU acts are in turn strongly linked with the IMO measures on GHG such as the IMO Data Collection System, the Energy Efficiency Existing Ship Index (EEXI), and the Carbon Intensity Indicator (CII) aiming to collect and publish information on the technical and operational energy efficiency of ships on a per-ship basis.

Any IMO measure on GHG matters, which will require the monitoring, verification and reporting of GHG emissions from shipping, could affect the EU MRV Regulation as well as the EU ETS Directive and the FuelEU Maritime Regulation.

Therefore, the amendments to Annex VI of MARPOL are capable of decisively influencing the requirements applicable under Directive (EU) 2016/802, Regulation (EU) 2015/757, Directive 2003/87/EC, Decision (EU) 2015/1814 and Regulation (EU) 2023/1805.

5.3. Amendments to the Ballast Water Management Convention

Directive 2009/16/EC on port State control¹¹ aims to ensure ships respect EU and international maritime safety and environmental rules and it is establishing common criteria for ship inspections.

Following a Commission's proposal for the revision of the Directive, the Ballast Water Management Convention will be included in the list of Conventions (article 2 point 1) that port State control officers should ensure its application to foreign flagged vessels during their

⁶ OJ L 275, 25.10.2003, p. 32

⁷ OJ L 264, 9.10.2015, p. 1

⁸ OJ L 130, 16.5.2023, p. 134

⁹ Regulation (EU) 2023/957 of the European Parliament and of the Council of 10 May 2023 amending Regulation (EU) 2015/757 in order to provide for the inclusion of maritime transport activities in the EU Emissions Trading System and for the monitoring, reporting and verification of emissions of additional greenhouse gases and emissions from additional ship types, OJ L 130, 16.5.2023, p. 105

¹⁰ OJ L 234, 22.9.2023, p. 48

¹¹ OJ L 131, 28.5.2009, p. 57

inspections (article 13). According to the case-law¹² of the Court of Justice, the risk of affectation concerns not only the rules as they stand, but also their foreseeable future development.

Therefore, the amendments to the Ballast Water Management Convention are capable of decisively influencing the requirements applicable under Directive 2009/16/EC.

5.4. Amendments to chapters II-1, II-2 and V of the International Convention for the Safety of Life at Sea (SOLAS), 1974

Article 6(2)(a)(i) of Directive 2009/45/EC on safety rules and standards for passenger ships¹³ applies SOLAS to Class A passenger ships, while Annex I, Chapter II-2 Fire Protection, Detection and Extinction lays down various and extensive requirements for Class B, C and D passenger ships when engaged in domestic voyages.

In addition, Annex I includes Regulations II-1/A-1/5 (Section 1) and II-1/A-1/3-4 (Section 2) which state that Class B ships shall be provided with a ship-specific emergency towing procedure. Such a procedure shall be carried aboard the ship for use in emergency situations and shall be based on existing arrangements and equipment available on board the ship. These regulations also refer to the ‘Guidelines for owners/operators on preparing emergency towing procedures’ (MSC.1/Circ.1255).

Directive 2002/59/EC, as amended, which requires that Member States take all appropriate measures to ensure that the master of a ship sailing within their search and rescue region/exclusive economic zone or equivalent, immediately reports to the coastal station responsible for that geographical area: “... (d) any slick of polluting materials and containers or packages seen drifting at sea.” The purpose is to make responsible authorities (affected coastal States) aware, so that timely measures can be taken. There is therefore already, at the EU level, a mandatory system (SafeSeaNet) in place for reporting lost containers. This incident reporting system has been established practice since 2012.

In addition, Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector provides that Member States’ maritime accidents in the maritime transport sector provides that Member States’ maritime accident investigation bodies are informed without delay by the responsible authorities and/or by the parties involved, of the occurrence of all casualties and incidents falling within the scope of the Directive. This includes the loss of containers at sea.

Therefore, the amendments to chapters II-1, II-2 and V of the International Convention for the Safety of Life at Sea (SOLAS), 1974 are capable of decisively influencing the requirements applicable under Directive 2009/45/EC, Directive 2002/59/EC and Directive 2009/18/EC.

5.5. Amendments to the International Code of Safety for Ships 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 engaged on domestic voyages applies SOLAS, as amended, to Class A passenger ships. Since the IGF Code is a mandatory Code under SOLAS then it is also applicable for passenger ships under this Directive.

In addition, Annex I of Directive 2009/45/EC includes two regulations related to ships using low-flashpoint fuels:

¹² Opinion 1/03 of the Court of Justice of 7 February 2006, Lugano Convention, point 126.

¹³ OJ L 163, 25.6.2009, p. 1

- Regulation II-1/G/1: applicable to New Class B, C and D [and existing Class B ships] - “Ships, irrespective of the date of construction, converted to using or which undertake to use gaseous or liquid fuel having a flashpoint lower than otherwise permitted under Regulation II-2/A/10, subparagraph.1.1, shall comply with the requirements of the IGF Code, as defined in SOLAS II-1/2.28.”; and
- Regulation II-1/G/57: Requirements for ships using low-flashpoint fuels - “ships using gaseous or liquid fuel having a flashpoint lower than otherwise permitted under Regulation II- 2/4.2.1.1 shall comply with the requirements of the IGF Code, as defined in SOLAS II-1/2.28.

Therefore, the amendments to the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code) are capable of decisively influencing the application of Directive 2009/45/EC.

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

Regulation (EU) No 530/2012 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers¹⁴ 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, such as the current amendments to focus surveys only on suspect areas for thickness measurements at the first renewal survey of double hull oil tankers will automatically be applicable through Regulation (EU) No 530/2012.

Therefore, the amendments to the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code) are capable of decisively influencing the application of Regulation (EU) No 530/2012.

5.7. Amendments to the International Life-Saving Appliance (LSA) Code

Directive 2014/90/EU on marine equipment¹⁵ ensures the free movement of such equipment within the Union through the uniform application of the relevant international instruments relating to marine equipment to be placed on board EU ships. In this regard, Implementing Regulation (EU) 2023/1667 has been adopted which includes life-saving appliances and lifejackets, where references are made to the LSA Code and to resolution MSC.81(70).

In addition, Article 6(2)(a)(i) of Directive 2009/45/EC on passenger ships operating domestically applies SOLAS to Class A passenger ships. Furthermore, in accordance with the same Directive, Class B, C and D ships are obliged to adhere to the main provisions of the LSA Code and SOLAS Chapter III.

Therefore, the amendments to the International Life-Saving Appliance (LSA) Code are capable of decisively influencing the application of Directive 2014/90/EU and Directive 2009/45/EC.

¹⁴ OJ L 172, 30.6.2012, p. 3

¹⁵ OJ L 257, 28.8.2014, p. 146

5.8. Amendments to the International Code for Fire Safety Systems (FSS Code)

Article 6(2)(a)(i) of Directive 2009/45/EC applies SOLAS, as amended, including the International Code for Fire Safety Systems (FSS Code), to Class A passenger ships, while Annex I, Chapter II-2 Fire Protection, Detection and Extinction lays down various and extensive requirements for Class B, C and D passenger ships when engaged in domestic voyages.

Therefore, the amendments to the International Code for Fire Safety Systems (FSS Code) are capable of decisively influencing the application of Directive 2009/45/EC.

5.9. Amendments to the Seafarers' Training, Certification and Watchkeeping (STCW) Code

Directive (EU) 2022/993 incorporates the STCW Convention into Union law. Training and certification requirements of seafarers are regulated in EU law in Directive (EU) 2022/993. Article 3 of the Directive obliges Member States to take the necessary measures to ensure that seafarers serving on ships receive a training that, as a minimum, covers the requirements of the STCW Convention, as laid down in Annex I to the Directive, including, where appropriate, the applicable provisions of the STCW Code (Article 1(21) of the Directive).

Therefore, the amendments to the Seafarers' Training, Certification and Watchkeeping (STCW) Code are capable of decisively influencing the application of Directive (EU) 2022/993.

5.10. EU competence

The subject matter of the envisaged acts concerns an area for which the Union has exclusive external competence by virtue of the last limb of Article 3(2) TFEU, as the envisaged acts are liable to 'affect common rules or alter their scope'.

6. LEGAL BASIS

6.1. Procedural legal basis

6.1.1. 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.¹⁶

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*'.¹⁷

¹⁶ Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraph 64.

¹⁷ Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

6.1.2. Application to the present case

The IMO's Marine Environment Protection Committee and Maritime Safety Committee and are bodies set up by an agreement, the Convention on the International Maritime Organization.

The acts which these two IMO committees 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 and notably:

- Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system. This is because it requires that Member States take all appropriate measures to ensure that the master of a ship sailing within their search and rescue region/exclusive economic zone or equivalent, immediately reports to the coastal station responsible for that geographical area: “... (d) any slick of polluting materials and containers or packages seen drifting at sea.” The purpose is to make responsible authorities (affected coastal States) aware, so that timely measures can be taken. There is therefore already, at the EU level, a mandatory system (SafeSeaNet) in place for reporting lost containers.
- Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector. This is because it provides that Member States' maritime accident investigation bodies are informed without delay by the responsible authorities and/or by the parties involved, of the occurrence of all casualties and incidents falling within the scope of the Directive. This includes the loss of containers at sea.
- Directive (EU) 2016/802 relating to a reduction in the sulphur content of certain liquid fuels. This is because it reflects the sulphur-in-fuel-related requirements and implementing provisions of the revised MARPOL Annex VI.
- Regulation (EU) 2015/757 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport. This is because it establishes the legal framework for an EU system to monitor, report and verify (MRV) GHG emissions. Compliance with the new obligations stemming from the extension of the EU ETS to maritime transport and the FuelEU Maritime Regulation will build on the monitoring, reporting, and verification system established by the EU MRV Regulation.
- Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system, as both amended by Directive (EU) 2023/959 which extended the EU ETS to the maritime transport sector. This is because it is strongly linked with the IMO measures on GHG such as the IMO Data Collection System, the Energy Efficiency Existing Ship Index (EEXI), and the Carbon Intensity Indicator (CII) aiming to collect and publish information on the technical and operational energy efficiency of ships on a per-ship basis.
- Regulation (EU) 2023/1805 on the use of renewable and low-carbon fuels in maritime transport. This is because it is strongly linked with the IMO measures on GHG such as the IMO Data Collection System, the Energy Efficiency Existing Ship Index (EEXI), and the Carbon Intensity Indicator (CII) aiming to collect and publish information on the technical and operational energy efficiency of ships on a per-ship basis.

- Directive 2009/16/EC on port State control. This is because, following a Commission’s proposal, the Ballast Water Management Convention will be included in the list of Conventions (article 2 point 1) that port State control officers should ensure applies to foreign flagged vessels during their inspections (article 13). According to the case-law of the Court of Justice, the risk of affectation concerns not only the rules as they stand, but also their foreseeable future development.
- Directive 2009/45/EC on safety rules and standards for passenger ships. This is because Article 6(2)(a)(i) applies SOLAS, as well as FSS Code, to Class A passenger ships, while Annex I, Chapter II-2 Fire Protection, Detection and Extinction lays down various and extensive requirements for Class B, C and D passenger ships when engaged in domestic voyages. In addition, since the IGF Code is a mandatory Code under SOLAS then it is also applicable for passenger ships under this Directive. Class B, C and D ships are also obliged to adhere to the main provisions of the LSA Code and SOLAS Chapter III.
- Regulation (EU) No 530/2012 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers. This is because it makes 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, such as the current amendments to focus surveys only on suspect areas for thickness measurements at the first renewal survey of double hull oil tankers will automatically be applicable through Regulation (EU) No 530/2012.
- Directive 2014/90/EU on marine equipment. This is because lifejackets and lifesaving appliances as well as Resolution MSC.81(70) form part of the Annex to Commission Implementing Regulation (EU) 2023/1667.
- Directive (EU) 2022/993 on the minimum level of training of seafarers. This is because it incorporates the STCW Convention into Union law, as well as the STCW Code.

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.

6.2. Substantive legal basis

6.2.1. 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 taken on the Union’s behalf. 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.

6.2.2. Application to the present case

The main objective and content of the envisaged act relate to maritime transport. Therefore, the substantive legal basis of the proposed decision is Article 100(2) TFEU.

6.3. Conclusion

The legal basis of the proposed decision should be Article 100(2) TFEU, in conjunction with Article 218(9) TFEU.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Maritime Organization during the 81st session of the Marine Environment Protection Committee and the 108th session of the Maritime Safety Committee on the adoption of amendments to the International Convention for the Prevention of Pollution from Ships (MARPOL), the Ballast Water Management Convention, the International Convention for the Safety of Life at Sea (SOLAS), the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code), the International Code of the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code), the International Life-Saving Appliance (LSA) Code, the International Code for Fire Safety Systems (FSS Code) and the Seafarers' Training, Certification and Watchkeeping (STCW) 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), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Convention on the International Maritime Organization ('IMO') entered into force on 17 March 1958.
- (2) The IMO is a specialised agency of the United Nations with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships. All Union Member States are members of the IMO. The Union is not a member of the IMO.
- (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 IMO's Marine Environment Protection Committee, in its 81st session from 18 March to 22 March 2024, is to adopt amendments to article V of Protocol I of the International Convention for the Prevention of Pollution from Ships (MARPOL), Annex VI of MARPOL on low-flashpoint fuels and other fuel oil related issues, on accessibility of the data in the IMO Ship Fuel Consumption Database (IMO DCS), and

on inclusion of data on transport work and enhanced level of granularity in the IMO DCS, and on the Ballast Water Management Convention.

- (6) The IMO's Maritime Safety Committee, in its 108th session from 15 May to 24 May 2024, is to adopt amendments to chapters II-1, II-2 and V of the International Convention for the Safety of Life at Sea (SOLAS), 1974, the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code), the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code), the International Life-Saving Appliance (LSA) Code, the International Code for Fire Safety Systems (FSS Code); and section A-VI/1 of the Seafarers' Training, Certification and Watchkeeping (STCW) Code.
- (7) It is appropriate to establish the position to be taken on the Union's behalf during the 81st session of the IMO's Marine Protection Environment Committee, as the envisioned acts are capable of decisively influencing the contents of Union law, namely Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system¹, Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector², Directive (EU) 2016/802 relating to a reduction in the sulphur content of certain liquid fuels³, Regulation (EU) 2015/757 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport⁴, Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union⁵, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system⁶, Regulation (EU) 2023/1805 on the use of renewable and low-carbon fuels in maritime transport⁷, and Directive 2009/16/EC on port State control⁸.
- (8) Therefore, the Union should support the amendments to article V of Protocol I of the International Convention for the Prevention of Pollution from Ships (MARPOL) because it is important to establish one single reporting system for the loss of containers, to avoid duplicative submission requirements and avoid confusion, which entails the risk of not reporting of containers lost at sea.
- (9) The Union should support the amendments to Annex VI of MARPOL on low-flashpoint fuels and other fuel oil related issues, because they will resolve the requirement for testing and including flashpoint information on the Bunker Delivery Note (BDN) for low-flashpoint fuels, which was inconsistent with the recent amendments to SOLAS chapter II-2 adopted at MSC 106. The Union should also support the amendments to Annex VI of MARPOL on accessibility of the data in the IMO Ship Fuel Consumption Database (IMO DCS), and on inclusion of data on transport work and enhanced level of granularity in the IMO DCS because they optimise the use of DCS to the benefit of shipping's decarbonisation policy-making and are a compromise amongst broader access to IMO DCS data and control thereof

¹ OJ L 208, 5.8.2002, p. 10

² OJ L 131, 28.5.2009, p. 114

³ OJ L 132, 21.5.2016, p. 58

⁴ OJ L 123, 19.5.2015, p. 55

⁵ OJ L 275, 25.10.2003, p. 32

⁶ OJ L 264, 9.10.2015, p. 1

⁷ OJ L 234, 22.9.2023, p. 48

⁸ OJ L 131, 28.5.2009, p. 57

by the IMO Secretariat. On the one hand, analytical consultancies and research entities are granted access to DCS data subject to the approval of the IMO Secretariat and on the other, they provide the possibility for any company to disclose the DCS data of their ships to the general public on a voluntary basis.

- (10) The Union should support the amendments to the Ballast Water Management Convention because they will increase the use of digitalisation on keeping electronic record books under the Convention.
- (11) It is appropriate to establish the position to be taken on the Union's behalf during the 108th session of the IMO's Maritime Safety Committee, as the envisioned acts are capable of decisively influencing the contents of Union law, namely Directive 2009/45/EC on safety rules and standards for passenger ships⁹, Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system¹⁰, Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector¹¹, Regulation (EU) No 530/2012 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers¹², Directive 2014/90/EU on marine equipment¹³ and Directive (EU) 2022/993 on the minimum level of training of seafarers¹⁴.
- (12) Therefore, the Union should support the amendments to chapters II-1, II-2 and V of the International Convention for the Safety of Life at Sea (SOLAS), 1974, because they will substantially increase safety ensuring that all new ships other than tankers, including passenger ships, of 20,000 gross tonnage and above have suitable equipment for towing in case of emergency, as well as enhancing in general the standards of fire safety of passenger ships, including ro-ro passenger ships, and the safety of oil fuel usage in passenger ships. They will also simplify the processing of container loss reports in order to comply with regulatory obligations, provide for a reporting requirement from the flag State to IMO, increase navigation safety and prevent pollution.
- (13) The Union should support the amendments to the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code) because they will enhance the safety of ships, including passenger ships, using natural gas as fuel.
- (14) The Union should support the amendments to the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code) because they will modify the Procedures for approval and certification of a firm engaged in thickness measurement of hull structures in the annexes of the 2019 amendments to the 2011 ESP Code, referring to the Administration rather than referring to an organization recognised by the Administration. This will help to clarify the procedure.
- (15) The Union should support the amendments to the International Life-Saving Appliance (LSA) Code because they promote maritime safety by revising the lowering speed of survival craft and rescue boats for passenger ships, by ensuring a suitable in-water

⁹ OJ L 163, 25.6.2009, p. 1

¹⁰ OJ L 208, 5.8.2002, p. 10

¹¹ OJ L 131, 28.5.2009, p. 114

¹² OJ L 172, 30.6.2012, p. 3

¹³ OJ L 257, 28.8.2014, p. 146

¹⁴ OJ L 169, 27.6.2022, p. 45

performance of lifejackets for the safety of seafarers and by increasing safety standards of single fall and hook systems with on-load release hooks by removing the exemptions provided in paragraph 4.4.7.6.17.

- (16) The Union should support the amendments to the International Code for Fire Safety Systems (FSS Code) because they will present significant benefits to the safety of life at sea by enhancing fire safety of passenger ships, and in particular ro-ro passenger ships.
- (17) The Union should support the amendments to the section A-VI/1 of the Seafarers' Training, Certification and Watchkeeping (STCW) Code because they will ensure a safe workplace for the seafarers by including in Section A-VI/1 on "Mandatory minimum requirements for safety familiarization, basic training and instruction for all seafarers" a new competence to "Contribute to the prevention of and response to bullying and harassment, including sexual assault and sexual harassment".
- (18) The Union's position is to be expressed by the Member States of the Union that are members of the IMO, and by the Commission, acting jointly,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 81st session of the International Maritime Organization's ('IMO') Marine Environment Protection Committee shall be to agree to the adoption of amendments to:

- (a) article V of Protocol I of the International Convention for the Prevention of Pollution from Ships (MARPOL), as set out in annex to IMO document MEPC 81/3/1,
- (b) Annex VI of MARPOL on low-flashpoint fuels and other fuel oil related issues, on accessibility of the data in the IMO Ship Fuel Consumption Database (IMO DCS), and on inclusion of data on transport work and enhanced level of granularity in the IMO DCS, as set out in annex to IMO document MEPC 81/3/2, and
- (c) the Ballast Water Management Convention as set out in the annex to IMO document MEPC 81/3.

Article 2

The position to be taken on the Union's behalf in the 108th session of the IMO's Maritime Safety Committee shall be to agree to the adoption of amendments to:

- (a) chapters II-1, II-2 and V of the International Convention for the Safety of Life at Sea (SOLAS), 1974, as set out in annexes 1 and 2 to IMO document MSC 108/3,
- (b) the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code), as set out in annex 3 to IMO document MSC 108/3,
- (c) the International Code on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers, 2011 (2011 ESP Code), as set out in annex 5 to IMO document MSC 108/3,
- (d) the International Life-Saving Appliance (LSA) Code, as set out in annex 6 to IMO document MSC 108/3,
- (e) the International Code for Fire Safety Systems (FSS Code) as set out in annex 7 to IMO document MSC 108/3; and

- (f) section A-VI/1 of the Seafarers' Training, Certification and Watchkeeping (STCW) Code as set out in annex to IMO document MSC 108/3/2.

Article 3

1. The position referred to in Article 1 shall be expressed by the Commission and by the Member States of the Union that are members of the IMO's Marine Environment Protection Committee, acting jointly in the interest of the Union.
2. The position referred to in Article 2 shall be expressed by the Commission and by the Member States of the Union that are members of the IMO's Maritime Safety Committee, acting jointly in the interest of the Union.

Article 4

This Decision is addressed to the Commission and the Member States.

Done at Brussels,

*For the Council
The President*