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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 68th session of the Marine Environment Protection Committee and the 95th session of the Maritime Safety Committee on the adoption of amendments to MARPOL, SOLAS and the 2009 Guidelines for exhaust gas cleaning systems

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The present Commission proposal concerns the establishment of the Union position at the 68th session of the IMO's Marine Environment Protection Committee and the 95th session of the IMO's Maritime Safety Committee in relation to 3 amendments of IMO instruments set out individually in the following sub-headings.

1.1 Amendments to MARPOL Annexes I, II, IV and V

MEPC 67 approved the Preamble, Introduction and Part II of the draft International Code for ships operating in polar waters (Polar Code) with a view to adoption at MEPC 68. Associated draft amendments to MARPOL Annexes I, II, IV and V of the MARPOL Convention were also approved by MEPC 67 with a view to adoption at MEPC 68. The Polar Code has been developed to supplement existing IMO instruments in order to increase the safety of ship's operation and mitigate the impact on the people and environment in the remote, vulnerable and potentially harsh polar waters.

These changes to MARPOL are set out in Annex 11 in the MEPC 67 report (MEPC 67/20). Paragraph 9.45 of that report indicates that the changes will be adopted at MEPC 68.

1.2 Amendments to the 2009 Guidelines for exhaust gas cleaning systems

The IMO Sub-committee on Pollution Prevention and Response (PPR 2) approved draft amendments to the 2009 Guidelines for exhaust gas cleaning systems, set out in resolution MEPC.184(59), with a view to adoption at MEPC 68. The 2009 guidelines for exhaust gas cleaning systems should provide clarity on the testing of scrubbers connected to ship machinery items that cannot be tested at higher loads, or tested at all while "at rest in harbour". The draft amendments, based on EU proposals, concern the use of a calculation-based methodology, such as computational fluid dynamics and/or the use of established empiric formulae, to be a feasible alternative to the measurements and are set out in sections 6, 6.9, 10.1.2.1(ii) and 10.1.2.2 of the 2009 Guidelines.

These changes to the 2009 Guidelines for exhaust gas cleaning systems are set out in Annex 1 in the PPR 2 report (PPR 2/21). Paragraph 2.23 of that report indicates that the changes will be adopted at MEPC 68.

1.3 Amendments to SOLAS regulation II-2/20.3

MSC 94 approved draft amendments to SOLAS regulation II-2/20.3 which will allow operation of the ventilation fans at a decreased number of air changes when an air quality control system is in place in accordance with MSC/Circ.729 on Design guidelines and operational recommendations for ventilation systems in ro-ro cargo spaces. The draft amendments apply to cargo and passenger ships in vehicle, special category and ro-ro spaces.

These changes are set out in Annex 11 to the MSC 94 report (MSC 94/21/add.1). Paragraph 8.7 of the MSC 94 report (MSC 94/21) indicates that the changes will be adopted at MSC 95.

2. ADOPTION OF THE IMO AMENDMENTS

2.1 Adoption of amendments

The amendments set out in points 1.1 - 1.3 above were approved at the 67th session of the Marine Environment Protection Committee meeting between 13 - 17 October 2014, the 94th session of the Maritime Safety Committee meeting between 17 - 21 November 2014, the 2nd session of the Sub-Committee on Pollution Prevention and Response meeting between 19 - 23 January 2015 and are to be submitted for adoption to the 68th session of the Marine Environment Protection Committee between 11 - 16 May 2015 and the 95th session of the Maritime Safety Committee between 3 - 12 June 2015.

2.2 Acceptance and entry into force

Once adopted by the two Committees, the amendments set out in points 1.1 and 1.3, above will be submitted to the respective contracting parties in order for these to express their consent to be bound by the said amendments. The resolution which will set out the amendments to the 2009 Guidelines for exhaust gas cleaning systems referred to in point 1.2 above will indicate the date of entry into force.

3. RELEVANT EU LEGISLATION AND EU COMPETENCE

3.1 Amendments to MARPOL Annexes I and II

Article 3 of Directive 2005/35/EC on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences sets out that this Directive applies in high seas. Some areas of the polar waters covered by the Polar Code are considered as high seas. In accordance with Article 2, the Directive applies to discharges of polluting substances, which shall mean substances covered by Annexes I (oil) and II (noxious liquid substances in bulk) to MARPOL 73/78. The purpose of Directive 2005/35/EC is to incorporate international standards for ship source pollution into EU law, and to ensure that polluters are adequately penalised. In accordance with Article 4 of the Directive, Member States shall ensure that ship-source discharges of polluting substances, including minor cases of such discharges, into any of the areas referred to in Article 3(1) are regarded as infringements if committed with intent, recklessly or with serious negligence.

The relevant sections are set out in Part II-A of the Polar Code on Pollution Prevention Measures, in which Chapters 1 and 2 deal with prevention of pollution by oil and control of pollution by noxious liquid substances in bulk.

Therefore, the amendments due to be adopted at MEPC 68, which would introduce changes to MARPOL concerning the Polar Code would affect EU law, through the application of Directive 2005/35/EC.

3.2 Amendments to the 2009 Guidelines for exhaust gas cleaning systems

The 2009 Guidelines for exhaust gas cleaning systems, set out in Resolution MEPC.184(59), are referred to in Annex II of Directive 2012/33/EU as regards the sulphur content of marine fuels as a principal mechanism for ensuring compliance with the Directive (the Sulphur Directive), in relation to conditions for the use of Exhaust Gas Cleaning Systems under that Directive, in particular the use of emission abatement methods set out in Article 4c.

The amendments due to be adopted at MEPC 68, which would introduce changes to the 2009 Guidelines, would affect EU law though the application of Directive 2012/33/EU.

3.3 Amendments to SOLAS regulations II-2/20.3.1.2.1

SOLAS regulation II-2/20.3.1.2.1, in which the issue of performance of ventilation systems is regulated, refers to the protection of vehicle, special category and ro-ro spaces and applies to passenger ships.

The amendments to be adopted at MSC 95, which would introduce changes to SOLAS regulation II-2/20.3, would affect EU law though the application of Directive 2009/45/EC on safety rules and standards for passenger ships. Article 6(2)(a)(i) establishes that new passenger ships of Class A shall comply entirely with the requirements of the 1974 SOLAS Convention, as amended. Furthermore the Commission notes that Directive 2009/45/EC contains detailed rules on the ventilation of passenger ships for Class B, C and D ships which are identical to those found in SOLAS, as laid down in Annex I, Chapter II, Part B, paragraph 9.

3.4 Summary

In view of the relevant EU legislation, the Commission considers that the adoption of the above-cited amendments expected to be adopted at MEPC 68 and MSC 95 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 affect common rules.

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 paragraphs 1.1 – 1.3 above to be adopted at the 68th session of the Marine Environment Protection Committee and the 95th session of the Maritime Safety Committee respectively.

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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 and to protect the marine environment.
- (2) The IMO Marine Environment Protection Committee (MEPC) meeting at its 67th session approved amendments to MARPOL. Those amendments are expected to be adopted in the 68th session of the MEPC to be held in May 2015.
- (3) The IMO Sub-committee on Pollution Prevention and Response (PPR) meeting at its 2nd session approved draft amendments to the 2009 Guidelines for exhaust gas cleaning systems. Those amendments are expected to be adopted in the 68th session of the MEPC to be held in May 2015.
- (4) The IMO Maritime Safety Committee (MSC) meeting at its 94th session approved amendments to SOLAS and the STCW Convention and Code. Those amendments are expected to be adopted in the 95th session of the MSC to be held in June 2015.
- (5) The amendments to Annexes I and II of the MARPOL Convention will introduce measures associated with the adoption of the draft International Code for ships operating in polar waters (Polar Code), to make the Polar Code mandatory. The Polar Code extends the current MARPOL ban on oil/noxious liquid discharges in the Antarctic to Polar Waters. Article 4, together with Article 3(1), of Directive 2005/35/EC of the European Parliament and of the Council¹, establishes that Member States shall ensure that ship-source discharges of polluting substances, including minor cases of such discharges, are regarded as infringements if committed with intent, recklessly or with serious negligence and therefore covers these issues.
- (6) The amendments to the 2009 Guidelines for exhaust gas cleaning systems will introduce the use of a calculation-based methodology for the testing of scrubbers connected to ship machinery items that cannot be tested at higher loads, or tested at all

¹ Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences (OJ L 255, 30.9.2005, p. 11)

while "at rest in harbour". Article 4c and Annex II of Council Directive 1999/32/EC², as amended, covers these issues and Annex II is derived from the 2009 Guidelines which will be amended.

- (7) The amendments to SOLAS II-2/20.3.1.2.1 will allow operation of the ventilation fans at a decreased number of air changes when an air quality control system is in place for passenger ships in vehicle, special category and ro-ro spaces. Article 6(2)(a)(i) of Directive 2009/45/EC of the European Parliament and of the Council³ establishes that new passenger ships of Class A shall comply entirely with the requirements of the 1974 SOLAS Convention, as amended, including Regulation II-2/20.3. Hence the changes to be adopted will have a direct legal effect on the Directive 2009/45/EC.
- (8) 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

The position of the Union at the 68th session of the IMO Marine Environment Protection Committee shall be to agree to the adoption of the following amendments to:

- MARPOL Annexes I and II as laid down in Annex 11 in IMO Document MEPC 67/20;
- the 2009 Guidelines for exhaust gas cleaning systems as laid down in Annex 1 in IMO Document PPR 2/21.

Article 2

The position of the Union at the 95th session of the IMO Maritime Safety Committee shall be to agree to the adoption of the following amendment to

- SOLAS regulation II-2/20.3.1.2.1 as laid down in Annex 11 in IMO Document MSC 94/21/add.1.

Article 3

The position of the Union as set out in Articles 1 and 2 shall be expressed by the Member States, which are members of IMO, acting jointly in the interest of the Union.

² Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC (OJ L 121, 11.5.1999, p. 13)

³ Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (OJ L 163, 25.6.2009, p. 1)

Article 4

Formal and minor changes to the positions referred to in Articles 1 and 2 may be agreed without requiring the position to be amended.

Article 5

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

Article 6

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*