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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document [COM\(2017\) 174 final](#).

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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 98th session of the Maritime Safety Committee and the 71st session of the Marine Environment Protection Committee on the adoption of amendments to SOLAS Regulation II-1/23, SOLAS Regulation II-2/9.4.1.3, the 1994 and 2000 High Speed Craft Codes, the International Life-saving Appliance Code and to Appendix V of MARPOL Annex VI

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The present Commission proposal concerns the establishment of the Union position at 98th session of the IMO's Maritime Safety Committee (MSC 98) and at the 71st session of the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC 71) in relation to the amendments set out individually in the following sub-headings.

1.1 Amendments to SOLAS Regulation II-1/23

The 95th and 96th sessions of the IMO Maritime Safety Committee (MSC 95 and MSC 96) approved several draft amendments to SOLAS Regulation II-1 on subdivision and damage stability regulations, which were grouped together and which are included in Council Decision (EU) 2016/2077 of 17 October 2016¹.

At MSC 97, the Committee agreed to hold the adoption of the draft amendments to SOLAS Chapter II-1 on subdivision and damage stability regulations in abeyance until MSC 98, except for adoption of the draft amendments to SOLAS regulation II-1/3-12 on Protection against noise. As regards the amendments to Regulation II-1/6, concerning the formula for the required subdivision index *R*, MSC 97 agreed to that any further modifications to Regulation II-1/6 should not lower the current safety level ensured by the SOLAS provisions in conformity with the position of the Union set out in Article 2(1)(a) and Article 2(2) of Council Decision (EU) 2016/2077.

Notwithstanding the decision to defer the adoption of SOLAS chapter II-1, the Committee agreed to consider the documents submitted to MSC 97 and to finalize the texts of the amendments. The Committee generally agreed to harmonization of the text in Regulations II-1/22, 23 and 24 as regards the existence of multiple expressions for similar requirements, and updating existing cross references, without altering the content of the previously approved amendments. The amendments can be considered minor, but Regulation II-1/23 concerns special requirements for ro-ro passenger ships and was not included in Council Decision (EU) 2016/2077. Regulation II-1/24 concerns cargo ships only.

These changes are set out in Annex 1 of document MSC 97/WP.5. Paragraph 3.17 of the MSC 97 report (MSC 97/22) indicates that the changes are foreseen to be adopted at MSC 98, subject to the modifications proposed in documents MSC 97/3/5 and MSC 97/3/4 and editorial improvements, if any.

¹ Council Decision (EU) 2016/2077 of 17 October 2016 on the position to be adopted on behalf of the European Union at the International Maritime Organization (IMO) during the 70th session of the Marine Environment Protection Committee and the 97th session of the Maritime Safety Committee, on the adoption of amendments to MARPOL Annex VI, SOLAS Regulations II-1, SOLAS Regulations III/1.4, III/30 and III/37, SOLAS Regulations II-2/1 and II-2/10, SOLAS Regulation II-1/3-12, the STCW Convention and Code, the Fire Safety Systems Code and the 2011 Enhanced Survey Programme Code, OJ L 320, 26.11.2016, p. 36.

1.2 Amendments to SOLAS Regulation II-2/9.4.1.3

The amendments to SOLAS Regulation II-2/9.4.1.3 intend to clarify the requirements for fire integrity of windows on passenger ships carrying not more than 36 passengers and special purpose ships with more than 60 (but not more than 240) persons on board. Ships carrying not more than 36 passengers should have the same level of safety as those carrying more than 36 passengers.

The amendments to SOLAS Regulation II-2/9.4.1.3 are set out in Annex 13 of the MSC 97 report (MSC 97/22). Paragraph 9.6 of the MSC 97 report indicates that the amendments will be adopted at MSC 98.

1.3 Amendments to the 1994 and 2000 High Speed Craft Codes

The amendments to the 1994 and 2000 High Speed Craft Codes (the HSC Codes) provide clarification regarding the application of paragraphs 8.10.1.4 to 8.10.1.6 of the 1994 and 2000 Codes concerning the exemption from the carriage of rescue boats for high-speed craft of less than 20 m and 30 m in length, respectively. Provided that the requirements of paragraph 8.10.1.6 in both Codes are fulfilled, which includes the new element that it must be possible to recover a helpless person from the water in a horizontal or near-horizontal body position, a high-speed craft of less than 30 m (2000 HSC Code) and 20 m (1994 HSC Code) in length may be exempted from carrying a rescue boat. The amendments to the 1994 and 2000 HSC Codes are set out in Annexes 15 and 16 of the MSC 97 report (MSC 97/22/Add.1). Paragraph 8.25 of the MSC 97 report (MSC 97/22) indicates that these amendments are foreseen to be adopted at MSC 98.

1.4 Amendments to the International Life-saving Appliance Code and to the Annex to Resolution MSC.81(70)²

The International Life-saving Appliance (LSA) Code provides international requirements for the life-saving appliances covered by Chapter III of the 1974 SOLAS Convention, including personal life-saving appliances, visual aids, survival craft, rescue boats, launching and embarkation appliances and marine evacuation systems, line-throwing appliances; and general alarm and public address systems.

The amendments to paragraphs 6.1.1.5 and 6.1.1.6 of the LSA Code and paragraph 8.1.1 of part 1 of the Annex to Resolution MSC.81(70) provide consistency to the static tests and their proof loads that launching appliances, including their structural members and winches have to withstand. MSC 97 endorsed the view of the third session of the Sub-Committee on Ship Systems and Equipment (SSE 3) that the amendments in question should be treated as minor corrections.

These amendments are set out in Annex 17 of the MSC 97 report (MSC 97/22/Add.1) and in Annex 1 of IMO document MSC 98/3/1. Paragraphs 8.34 and 8.35 of the MSC 97 report (MSC 97/22) indicate that the amendments are foreseen to be adopted at MSC 98.

² Revised recommendation on testing of life-saving appliances.

1.5 Amendments to Appendix V of MARPOL Annex VI

A proposal of the Union for MEPC 67 (MEPC 67/12/7) included amendments to the existing Appendix V of MARPOL Annex VI, which provides the standard text of the bunker delivery note. The amendment would have allowed ships that have equivalent methods on-board (notably exhaust gas cleaning systems (EGCS)), approved in accordance with Regulation 4 of MARPOL Annex VI, to bunker fuel oil with a higher sulphur content than laid down in the Regulations 14.1 and 14.4 of MARPOL Annex VI - Information to be included in the bunker delivery note (BDN).

In view of the increasing number of ships equipped with EGCS, the amendments proposed by the Union were deemed necessary to align the standard text of the bunker delivery note with the fact that ships may continue to use fuels with a higher sulphur content even after the entry into force of the 0.10% sulphur content requirements in sulphur emission control areas ((S)ECAs) as of 1 January 2015.

MEPC 67 agreed to the need for the amendments but held that further discussion was needed. Thus, the EU submission was deferred to the second session of the Sub-Committee on Pollution Prevention and Response (PPR 2).

PPR 2 held extensive debate in the related working group without succeeding to find an agreement on the exact form of the amended text. Following PPR 2, a proposal of the Union for PPR 3 (PPR 3/10) accommodated as far as possible the views expressed at PPR 2. The proposal concerned the insertion of additional clarifications in Appendix V of MARPOL Annex VI, to allow the supplier, following the purchaser's notification, to declare in the Bunker Delivery Note (BDN) that the fuel is intended to be used by a ship that meets the sulphur requirements through an equivalent means.

These amendments are set out in Annex 7 in MEPC 70/18/Add.1. Paragraph 5.9 of the MEPC 70 report (MEPC 70/18) indicates that the amendments are foreseen to be adopted at MEPC 71.

2. ADOPTION OF THE IMO AMENDMENTS

2.1 Adoption of amendments

The amendments set out in points 1.1 - 1.4 above were approved at 97th session of the Maritime Safety Committee meeting between 21 – 25 November 2016 and are to be submitted for adoption to the 98th session of the Maritime Safety Committee between 7 – 16 June 2017. The amendments set out in point 1.5 above were approved at the 70th session of the Marine Environment Protection Committee between 24 – 28 October 2016 and are to be submitted for adoption to the 71st session of the Marine Environment Protection Committee between 3 – 7 July 2017.

2.2 Acceptance

Once approved and adopted by the two Committees, the amendments set out in points 1.1 to 1.5 above will be communicated for acceptance to the respective Contracting Parties.

3. RELEVANT EU LEGISLATION AND EU COMPETENCE

3.1 Amendments to SOLAS Regulation II-1/23

SOLAS Regulation II-1 regulates construction-structure, subdivision and stability machinery and electrical installations. The amendments to SOLAS Regulation II-1/23 to be adopted at MSC 98 cover passenger ships. Article 6(2)(a)(i) of Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships establishes that new passenger ships of Class A are to comply entirely with the requirements of the 1974 SOLAS Convention, as amended.

Therefore, the amendments to SOLAS Regulation II-1/23 would affect EU law through the application of Directive 2009/45/EC.

3.2 Amendments to SOLAS Regulation II-2/9.4.1.3

Article 6(2)(a)(i) of Directive 2009/45/EC applies the 1974 SOLAS Convention, as amended, to Class A passenger ships. Moreover, Directive 2009/45/EC, Annex I, Chapter II-2 Part B.10.4 stipulates that for passenger ships carrying less than 36 passengers special attention shall be given to the fire integrity of windows facing open or enclosed lifeboats and life-raft embarkation areas and to the fire integrity of windows situated below such areas in such a position that their failure during a fire would impede the launching of, or embarkation into, lifeboats or life-rafts.

Therefore, the amendments to SOLAS Regulation II-2/9.4.1.3 would affect EU law through the application of Directive 2009/45/EC.

3.3 Amendments to the 1994 and 2000 High Speed Craft Codes

Article 6(2)(a)(i) of Directive 2009/45/EC applies SOLAS, as amended, to Class A passenger ships. In addition, Article 6(4)(a) of that Directive sets out that high speed craft shall comply with the requirements of Regulation X/2 and X/3 of SOLAS, which refers to compliance with the 1994 and 2000 High Speed Craft Codes. Likewise, compliance with the High Speed Craft Code is set out in Article 6(4)(b) and (c). Article 2(c) of that Directive establishes that references to the 1994 and 2000 High Speed Craft Codes concern the Codes in their up-to-date version. As a result, any amendment of those Codes will have a direct impact on the application of EU legislation.

Therefore, the amendments to the 1994 and 2000 High Speed Craft Codes relating to fire-extinguishing arrangements in machinery spaces would affect EU law through the application of Directive 2009/45/EC.

3.4 Amendments to the International Life-saving Appliance Code and to the Annex to Resolution MSC.81(70)

Launching appliances and winches are included in Commission Implementing Regulation (EU) 2017/306 of 6 February 2017 indicating design, construction and performance requirements and testing standards for marine equipment. Reference is made in that Implementing Regulation to the LSA Code and to resolution MSC.81(70) in relation to items MED/1.21, 1.23, 1.24 and 1.25 as regards as launching appliances, as well as items MED/1.41a, 1.41b, 1.41c, 1.41d, 1.41e as

regards winches. This equipment therefore falls in the scope of Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC.

Therefore, the amendments to the LSA Code and to the Annex to resolution MSC.81(70) would affect EU law through the application of Directive 2014/90/EU and Implementing Regulation (EU) 2017/306.

3.5 Amendments to Appendix V of MARPOL Annex VI

MARPOL Annex VI requirements, with regard to limitation of SOx emissions, are implemented in EU law in Directive 2016/802/EU of the European Parliament and of the Council relating to a reduction in the sulphur content of certain liquid fuels. Articles 6(9) indents (b) and (c) as well as 13(2)(a) of this Directive refer to the BDN as a principal mechanism for ensuring compliance with the Directive. Equivalent means of compliance are regarded as alternative abatement methods, as defined in Article 2(o) of Directive 2016/802/EU, and may be used provided that the ships using the emission abatement method continuously achieve reductions of sulphur dioxide emissions that are at least equivalent to the reductions that would be achieved by using marine fuels that meet the requirements of the Directive.

Therefore, the amendments to Appendix V of MARPOL Annex VI would affect EU law through the application of Directive 2016/802/EU.

3.6 Summary

In view of the links between the proposed amendments and the relevant EU legislation as set out above, the Commission considers that the adoption of the above-cited amendments expected at MSC 98 and MEPC 71 come under EU exclusive external competence, which the Union has acquired pursuant to Article 3(2) TFEU, in so far as the adoption of the changes to the international instruments at stake 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 nor a contracting party to the concerned international instruments, 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 – 1.5 above to be adopted at the 98th session of the Maritime Safety Committee respectively and at the 71st session of the Marine Environment Protection Committee.

Proposal for a

COUNCIL DECISION

on the position to be adopted on behalf of the European Union at the International Maritime Organization during the 98th session of the Maritime Safety Committee and the 71st session of the Marine Environment Protection Committee on the adoption of amendments to SOLAS Regulation II-1/23, SOLAS Regulation II-2/9.4.1.3, the 1994 and 2000 High Speed Craft Codes, the International Life-saving Appliance Code and to Appendix V of MARPOL Annex VI

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 at improving maritime safety and protecting the marine environment.
- (2) The Maritime Safety Committee (MSC) of the International Maritime Organization ('IMO') meeting at its 97th session approved amendments to Regulation II-1/23 and Regulation II-2/9.4.3 of the International Convention for the Safety of Life at Sea (SOLAS), to the 1994 and 2000 International High Speed Craft Codes (HSC Codes) and the International Life-saving Appliance Code (LSA Code) and to the Annex to Resolution MSC.81(70). Those amendments are expected to be adopted in the 98th session of the MSC to be held in June 2017 (MSC98).
- (3) The Marine Environment Protection Committee (MEPC) of the IMO meeting at its 70th session agreed on amendments to Appendix V of Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL), to allow ships that meet the requirements through equivalent means, having the Bunker Delivery Note (BDN) declaring that the fuel oil is supplied in accordance to the purchaser's notification that the fuel oil is intended to be used in combination with equivalent means of compliance. Those amendments are expected to be adopted in the 71st session of the MEPC to be held in July 2017 (MEPC 71).
- (4) The MSC of the IMO, meeting at its 95th and 96th sessions, approved several draft amendments to SOLAS Regulation II-1 on subdivision and damage stability

regulations, which were grouped together and which were included in Council Decision (EU) 2016/2077 of 17 October 2016³.

- (5) The MSC of the IMO, meeting at its 97th session, agreed to hold the adoption of most of the draft amendments to SOLAS Chapter II-1 on subdivision and damage stability regulations in abeyance until the 98th session of the MSC, and as regards the amendments to Regulation II-1/6, concerning the formula for the required subdivision index *R*, agreed to that any further modifications to Regulation II-1/6 should not lower the current safety level.
- (6) The position of the Union as set out in Article 2(1)(a) and Article 2(2) of Council Decision (EU) 2016/2077 therefore remains applicable.
- (7) The MSC of the IMO, meeting at its 97th session, decided to defer the adoption of amendments to SOLAS Chapter II-1 to the 98th session of the MSC, the Committee generally agreed to the harmonisation of the text in Regulations II-1/22, 23 and 24 as regards the existence of multiple expressions for similar requirements, and updating existing cross references, without altering the content of the previously approved amendments. Regulation II-1/23 concerns special requirements for ro-ro passenger ships and it is not covered by the position set in Council Decision (EU) 2016/2077. Directive 2009/45/EC of the European Parliament and of the Council⁴ applies to passenger ships and high-speed passenger craft which are engaged in domestic voyages. Article 6(2)(a)(i) of that Directive provides that new passenger ships of Class A are to comply entirely with the requirements of the 1974 SOLAS Convention, as amended.
- (8) The amendments to SOLAS Regulation II-2/9.4.1.3 intend to clarify the requirements for fire integrity of windows on passenger ships carrying not more than 36 passengers and special purpose ships with more than 60 (but not more than 240) persons on board. Ships carrying not more than 36 passengers should ensure the same level of safety as those carrying more than 36 passengers. Directive 2009/45/EC of the European Parliament and of the Council applies to passenger ships and high-speed passenger craft which are engaged in domestic voyages. Article 6(2)(a)(i) of that Directive provides that new passenger ships of Class A are to comply entirely with the requirements of the 1974 SOLAS Convention, as amended. Annex I, Chapter II-2 Part B.10.4 of that Directive stipulates that for passenger ships carrying less than 36 passengers special attention is to be given to the fire integrity of windows facing open or enclosed lifeboats and life-raft embarkation areas and to the fire integrity of windows situated below such areas in such a position that their failure during a fire would impede the launching of, or embarkation into, lifeboats or life-rafts.

³ Council Decision (EU) 2016/2077 of 17 October 2016 on the position to be adopted on behalf of the European Union at the International Maritime Organization (IMO) during the 70th session of the Marine Environment Protection Committee and the 97th session of the Maritime Safety Committee, on the adoption of amendments to MARPOL Annex VI, SOLAS Regulations II-1, SOLAS Regulations III/1.4, III/30 and III/37, SOLAS Regulations II-2/1 and II-2/10, SOLAS Regulation II-1/3-12, the STCW Convention and Code, the Fire Safety Systems Code and the 2011 Enhanced Survey Programme Code, OJ L 320, 26.11.2016, p. 36.

⁴ Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (OJ L 163, 25.6.2009, p. 1).

- (9) The amendments to the 1994 and 2000 HSC Codes provide clarification regarding the application of paragraphs 8.10.1.4 to 8.10.1.6 of the Codes concerning the exemption from the carriage of rescue boats for high-speed craft of less than 20 m and 30 m in length, respectively. Provided that the requirements of paragraph 8.10.1.6 in both Codes are fulfilled, which includes the new element that it must be possible to recover a helpless person from the water in a horizontal or near-horizontal body position, a high-speed craft of less than 30 m, for the purposes of the 2000 HSC Code or 20 m for the purposes of the 1994 HSC Code in length, may be exempted from carrying a rescue boat. Directive 2009/45/EC of the European Parliament and of the Council applies to passenger ships and high-speed passenger craft which are engaged in domestic voyages. Article 6(2)(a)(i) of that Directive provides that new passenger ships of Class A are to comply entirely with the requirements of the 1974 SOLAS Convention, as amended.
- (10) The LSA Code provides international requirements for the life-saving appliances that are covered by Chapter III of the 1974 SOLAS Convention, as amended. The amendments to paragraphs 6.1.1.5 and 6.1.1.6 of the LSA Code and paragraph 8.1.1 of part 1 of the Annex to Resolution MSC.81(70) ensure consistency with the static tests and their proof loads that launching appliances, including their structural members and winches, have to withstand and should be treated as minor corrections. Launching appliances and winches are listed in Commission Implementing Regulation (EU) 2017/306⁵, which refers to the LSA Code and to resolution MSC.81(70) in relation to items MED/1.21, 1.23, 1.24 and 1.25 as regards as launching appliances, and to items MED/1.41a, 1.41b, 1.41c, 1.41d, 1.41e as regards winches. They fall therefore in the scope of Directive 2014/90/EU of the European Parliament and of the Council⁶.
- (11) The amendments to Appendix V of MARPOL Annex VI concern the insertion of additional clarifications in order to allow ships that meet the requirements as regards the sulphur content of fuel in sulphur emission control areas ((S)ECAs) through equivalent means (exhaust gas cleaning systems (EGCS)), to allow the supplier, following the purchaser's notification, to declare in the Bunker Delivery Note (BDN) that the fuel is intended to be used by a ship that meets the sulphur requirements through an equivalent means. . In view of the increasing number of ships equipped with EGCS, the amendments are necessary to align the standard text of the BDN with the fact that ships may continue to use fuels with a higher sulphur content even after the entry into force of the 0.10% sulphur content requirements in (S)ECAs as of 1 January 2015. MARPOL Annex VI requirements, with regard to limitation of SO_x emissions, are implemented in EU law in Directive 2016/802/EU of the European Parliament and of the Council⁷. Articles 6(9) indents (b) and (c) as well as 13(2)(a) of this Directive refer to the BDN as a principal mechanism for ensuring compliance with the Directive. Equivalent means of compliance are regarded as alternative abatement methods, as defined in Article 2(o) of Directive 2016/802/EU, and may be used provided the ships using the emission abatement method continuously achieve

⁵ Commission Implementing Regulation (EU) 2017/306 of 6 February 2017 indicating design, construction and performance requirements and testing standards for marine equipment, OJ L 48, 24.02.2017, p. 1.

⁶ Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC, OJ L 256, 28.08.2017, p. 146.

⁷ Directive 2016/802/EU of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (codification), OJ L132, 21.5.2016, p. 58.

reductions of sulphur dioxide emissions that are at least equivalent to the reductions that would be achieved by using marine fuels that meet the requirements of the Directive.

- (12) 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 98th session of the IMO Maritime Safety Committee shall be to agree to the adoption of the following amendments to:

- (a) SOLAS Regulation II-1/23 as laid down in Annex 1 of IMO document MSC 97/WP.5, subject to the modifications proposed in IMO documents MSC 97/3/5 and MSC 97/3/4;
- (b) SOLAS Regulation II-2/9.4.1.3 as laid down in Annex 13 of IMO document MSC 97/22;
- (c) The 1994 and 2000 HSC Codes as laid down in Annexes 15 and 16 of IMO document MSC 97/22/Add.1;
- (d) The LSA Code and the Annex to Resolution MSC.81(70) as laid down in Annex 17 of IMO document MSC 97/22/Add.1 and in Annex 1 of IMO document MSC 98/3/1.

Article 2

The position of the Union at the 71st session of the IMO Marine Environment Protection Committee shall be to agree to the adoption of the amendments to Appendix V of MARPOL Annex VI as laid down in Annex 7 of IMO document MEPC 70/18/Add.1.

Article 3

1. 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. Minor changes to the position referred to in Articles 1 and 2 may be agreed without requiring that position to be amended.

Article 4

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 2.

Article 5

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*