



**COUNCIL OF  
THE EUROPEAN UNION**

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From: General Secretariat of the Council

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

- Adoption

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**Statement for the minutes by the United Kingdom**

The United Kingdom supports the adoption of all the amendments contained in this Decision which are being put forward to be adopted at the International Maritime Organisation Maritime Safety Committee. However, the United Kingdom only accepts there is exclusive external competence for the Union in respect of those amendments proposed which have a direct effect on current internal EU legislation. The United Kingdom does not accept there is exclusive Union competence where the amendments do not have a direct effect on, or automatic application to, current internal EU legislation. Accordingly, the United Kingdom acknowledges Article 2 of the Decision that provides that Member States are authorised to give their consent to be bound by the amendments, in the interests of the Union, only to the extent that they fall under the exclusive competence of the Union. Consequently, the adoption of this Decision should not be taken to confer exclusive competence on the Union in respect of future amendments to IMO instruments where such amendments do not have a direct effect on EU Law.

**Statement for the minutes by the Netherlands**

In order to safeguard the interests of the European Union, the Netherlands votes in favour of the proposed Council Decision on the position to be adopted on behalf of the European Union at the International Maritime Organization during the 93rd session of the Maritime Safety Committee on the adoption of amendments to SOLAS Regulations II-1/29, II-2/3, 2/9.7, 2/13.4, 2/18 III/20, the Life Saving Appliances Code and the 2011 Enhanced Survey Programme Code.

While the Netherlands is in favour of a pragmatic approach according to our duty of loyal cooperation and to safeguard the interests of the European Union, this vote in this specific case, cannot be interpreted as a relinquishment of our original position in the case pending (C-399/12). Neither does this set a precedent for similar cases where the competence for external representation has become an issue.

It should therefore be made abundantly clear that the arrangements under this proposal are without prejudice to the division of competences between the European Union and its Member States and that this vote cannot be interpreted in any way as an acceptance of article 218(9) TFEU as an appropriate legal basis for these Council Decisions.

### **Statement for the minutes by the Federal Republic of Germany**

With regard to the question of EU competence, Germany is grateful for the advice of the Council Legal Service, which explicitly confirmed that there is no exclusive Union competence for passenger ships and high-speed passenger craft engaged on international voyages.

By adopting Directive 2009/45/EC on safety rules and standards for passenger ships, the Union has exercised its competence internally only for passenger ships and craft which, regardless of their flag, are engaged on domestic voyages. It is true that under the Directive the current SOLAS requirements, which in themselves apply only to ships on international voyages, are made applicable to a specific type of ship which is used exclusively for domestic voyages. However, this adjustment of safety requirements for national traffic to developments at international level in the interest of simplification and for technical reasons does not justify exclusive external Union competence for the entire area of international passenger ship safety governed by the SOLAS Convention. According to Protocol No 25 on the exercise of shared competence, even when the Union has taken action in a certain area in which shared competence exists, the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area.

An external EU competence for passenger ships and high-speed passenger craft based on exercised shared competence therefore exists only in a narrowly defined part of an area, i.e. the area of domestic passenger ship safety and, in respect of passenger ships engaging in international traffic, only under Article 14 of Directive 2009/45/EC.

Clarification to this effect is provided by the limitation in Article 2 of the proposal for a Council Decision on the position to be adopted, on behalf of the European Union, at the International Maritime Organization (IMO) during the 93rd session of the Maritime Safety Committee.

## **Statement for the minutes by the Federal Republic of Germany**

The Proposal for a Council Decision on the position to be adopted on behalf of the European Union at the International Maritime Organization during the 93rd session of the Maritime Safety Committee on the adoption of amendments to SOLAS Regulations II-2/1, 2/3, 2/9.7, 2/13.4, 2/18, 2/20-1, 2/29, Chapter III, the Life Saving Appliances Code and the 2011 Enhanced Survey Programme Code, cites Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) as the legal basis. The Federal Government has misgivings about the use of this legal basis for the Decision.

The Article 218(9) TFEU procedure does not apply to the coordination of EU Member States' positions in international organisations to which only the Member States, but not the EU itself, belong. The EU itself is not a member of the IMO. Only the EU Member States belong to the IMO. Since the EU is not a member of the IMO, these are not the decisions of an international organisation with legal effects for the EU, which is the condition set out in the wording of the provision.

The Federal Government points out that the Federal Republic of Germany has taken legal action at the Court of Justice of the European Union against a Council Decision based on Article 218(9) TFEU in a similar case (Case C-399/12).

In terms of content, the positions taken by Germany at the IMO will accord with those agreed in the Council Decision, but will be without prejudice to the misgivings about the legal basis expressed in this statement or to Germany's views in the above proceedings at the Court of Justice of the European Union.

## **Statement for the minutes by Greece**

Greece endorses the content of the text of the Council Decision on the position to be adopted on behalf of the EU at the 93rd session of the Maritime Safety Committee (MSC), concerning the amendments to international conventions (SOLAS - LSA Code - ESP Codes), as this text was drafted during the negotiation in the Council and therefore Greece will support the EU positions in the context of the IMO.

Nevertheless, while Greece is in favour of a pragmatic approach according to our duty of loyal cooperation as an EU Member State, we still maintain our reservation regarding Article 218(9) TFEU as the appropriate legal basis for the Council decision in question, establishing the position to be adopted on behalf of the European Union and the subsequent procedure for coordination between the EU Member States in the IMO.

In addition, Greece reiterates its position according to which it considers that the aforementioned procedure must not set a precedent for similar cases, where the competence for external representation of the EU Member States in the IMO or in other International Organisations has been or will become an issue.

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