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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.

### **Statement for the minutes by Romania**

The proposal for a Council Decision on the mentioned subject refers to article 100 (2) and article 218 paragraph 9 of the Treaty on the functioning of the European Union (TFEU) as the legal basis for the proposal. Romania has concerns on the use of article 218 paragraph 9 TFEU as procedural legal basis.

RO would like to underline the fact that article 218 TFEU represents the procedural basis for concluding an international agreement to which the EU will be a party (paragraph 1: “[...] agreements between the Union and third countries or international organisations [...]”). In the current case, the provision of article 218 paragraph 9 TFEU does not apply, since, according to the International Maritime Organization Convention, only states can be parties, while the Commission has observer status.

## **Statement for the minutes by Cyprus**

Cyprus, for the purpose of enabling the International Maritime Organization (IMO), to make progress on matters within its mandate, and in the interest of enhancing safety and security at sea and the protection of the environment, does not oppose to the adoption of the following proposed Council Decision:

- 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

However, Cyprus would like to stress and place it on record that the non opposition of Cyprus to the proposed Council Decision, shall not, and cannot, be considered or construed as, creating, or, being any form of, a precedent, and it is without prejudice to the views or positions Cyprus may opt to express, or adopt, in the context of the outcome of the case pending before the European Court of Justice in relation to the applicability of the provisions of Article 218(9) of the Treaty on the Functioning of the European Union.

## **Statement for the minutes by Spain**

Spain shares the concerns of other delegations in relation to the extent and consequences of the EU competence claimed on these amendments. We recognize that article 2 of the Council decision clearly states that we have to give our consent to be bound *to the extent that the amendments fall under the exclusive competence of the Union*.

But the question that arises is: what happens if there is a clear conflict between the application of these amendments to passenger ships and cargo ships? That is, we are being asked to accept an amendment in the interest of the Union but such an acceptance would be problematic for us if the amendment goes against our interest as Member State, as the cargo ships are also involved.

A similar competence issue also happens with the ESP Code. There is a claim of competence through a European regulation that mentions in its articles a resolution that mentions the ESP. The CAS and the ESP are not the same.

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