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PROPOSAL

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Delegations will find attached document COM(2014) 627 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 94th session of the Maritime Safety Committee on the adoption of amendments to the 2011 Enhanced Survey Programme Code

EXPLANATORY MEMORANDUM

1. INTRODUCTION

- 1.1 The present Commission proposal concerns the establishment of the Union position at the 94th session of the IMO's Maritime Safety Committee in relation to amendments to the 2011 Enhanced Survey Programme Code as set out below.
- 1.2 The International Maritime Organization's Condition Assessment Scheme (CAS) sets out the framework for an intensified inspection of ships older than 15 years. The enhanced Programme of Inspections during surveys of Bulk Carriers and Oil Tankers or Enhanced Survey Programme (ESP) specifies how to undertake such an intensified inspection. As the CAS uses the ESP to achieve its aim, the CAS refers to the ESP as a tool to do so. These amendments to the ESP Code aim to bring the ESP Code in line with International Association of Classification Societies (IACS) current practices and also to allow under certain conditions hydrostatic testing of cargo tanks by the ship's crew, under the direction of the master, in lieu of carrying out such testing in the presence of a surveyor.
- 1.3 These changes are set out in Annex 22 in MSC 93/22/Add.3. Para 10.8 of the MSC 93 report (MSC 93/22) indicates that these amendments will be adopted at MSC 94.

2. ADOPTION OF THE IMO AMENDMENTS

2.1 Adoption of amendments to the 2011 Enhanced Survey Programme Code

These amendments were approved at the 93rd session of the Maritime Safety Committee meeting between 14-23 May 2014 and are to be submitted for adoption to the 94th session of that Committee meeting between 17-21 November 2014.

2.2 Acceptance and entry into force.

Once approved and adopted by this Committee, the above amendments will be submitted to the respective contracting parties in order for these to express their consent to be bound by the said amendments.

3. RELEVANT EU LEGISLATION AND EU COMPETENCE

3.1 Amendments to the 2011 Enhanced Survey Programme (ESP) Code

Regulation (EU) No 530/2012¹ on the accelerated phasing-in of double hull or equivalent design requirements for single-hull oil tankers aims to establish an accelerated phasing-in scheme for the application of the double-hull or equivalent design requirements of MARPOL 73/78, as defined in Article 3 of this Regulation, to single-hull oil tankers, and to ban the transport to or from ports of the Member States of heavy grade oil in single-hull oil tankers.

¹ OJ L 172, 30.6.2012, p.3

This Regulation makes mandatory the application of the IMO's Condition Assessment Scheme (CAS) to single hull oil tankers above 15 years of age. Article 5 requires such tankers to comply with the CAS, which is then defined in Article 6 as the Condition Assessment Scheme adopted by Resolution MEPC 94(46) of 27 April 2001 as amended by Resolution MEPC 99(48) of 11 October 2002 and by Resolution MEPC 112(50) of 4 December 2003. 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 will be directly and automatically be applicable through Regulation (EU) No 530/2012.

Therefore, the amendments due to be adopted at MSC 94, which would introduce changes to the ESP Code, would affect EU law, through the application of Regulation (EU) No 530/2012.

3.2 Summary

In view of the relevant EU legislation above, the Commission considers that the adoption of the above-cited amendments expected to be adopted at MSC 94 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 paras 1.2 to 1.3 above to be adopted at the 94th session of the Maritime Safety Committee respectively.

Proposal for a

COUNCIL DECISION

on the position to be adopted on behalf of the European Union at the International Maritime Organization during the 94th session of the Maritime Safety Committee on the adoption of amendments to the 2011 Enhanced Survey Programme 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) 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.
- (2) The IMO Maritime Safety Committee (MSC) meeting at its 93rd session approved amendments to the 2011 Enhanced Survey Programme Code. Those amendments are expected to be adopted in the 94th session of the MSC, to be held in November 2014.
- (3) The amendments to the 2011 Enhanced Survey Programme (ESP) Code bring it into line with the practices of classification societies and also allow under certain conditions hydrostatic testing of cargo tanks by the ship's crew, under the direction of the master, in lieu of carrying out such testing in the presence of a surveyor.
- (4) Articles 5 and 6 of Regulation (EU) No 530/2012 of the European Parliament and of the Council² 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 will automatically be applicable through Regulation (EU) No 530/2012.
- (5) 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.

² Regulation (EU) No 530/2012 of the European Parliament and of the Council on the accelerated phasing-in of double hull or equivalent design requirements for single-hull oil tankers (OJ L 172, 30.6.2012, p.3)

HAS ADOPTED THIS DECISION:

Article 1

1. The position of the Union at the 94th session of the IMO Maritime Safety Committee shall be to agree to the adoption of the amendments to the 2011 Enhanced Survey Programme Code as laid down in Annex 22 of the IMO document MSC 93/22/Add.3.
2. The position of the Union as set out in paragraph 1 shall be expressed by the Member States, which are members of IMO, acting jointly in the interest of the Union.
3. Formal and minor changes to this position may be agreed without requiring that position to be amended.

Article 2

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

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*