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## PROPOSAL

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 19 February 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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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 40th session of the Facilitation Committee, the 69th session of  
the Marine Environment Protection Committee and the 96th session of the  
Maritime Safety Committee on the adoption of amendments to the  
Facilitation Convention MARPOL Annex IV, SOLAS Regulations II-2/13  
and II-2/18, the Fire Safety Systems Code and the 2011 Enhanced Survey  
Programme Code

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Delegations will find attached document COM(2016) 77 final.

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Encl.: COM(2016) 77 final



Brussels, 19.2.2016  
COM(2016) 77 final

2016/0048 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be adopted on behalf of the European Union at the International Maritime Organization during the 40<sup>th</sup> session of the Facilitation Committee, the 69<sup>th</sup> session of the Marine Environment Protection Committee and the 96<sup>th</sup> session of the Maritime Safety Committee on the adoption of amendments to the Facilitation Convention MARPOL Annex IV, SOLAS Regulations II-2/13 and II-2/18, the Fire Safety Systems Code and the 2011 Enhanced Survey Programme Code**

## EXPLANATORY MEMORANDUM

### **1. INTRODUCTION**

The present Commission proposal concerns the establishment of the Union position at the 40<sup>th</sup> session of the International Maritime Organization's (IMO) Facilitation Committee (FAL 40), the 69<sup>th</sup> session of the IMO's Marine Environment Protection Committee (MEPC 69) and the 96<sup>th</sup> session of the IMO's Maritime Safety Committee (MSC 96) in relation to 6 amendments set out individually in the following sub-headings.

#### **1.1 General review of the Facilitation Convention**

The 39<sup>th</sup> session of the Facilitation Committee (FAL 39) approved the amendments to the annex to the Facilitation (FAL) Convention with a view to adoption at FAL 40, following the agreement at FAL 35 to initiate a comprehensive revision of the Convention with a view to ensuring that it adequately addressed the present and emerging needs of the shipping industry as well as to modernize its provisions, taking into account developments in the field of the transmission of information and data by electronic means and the single window concept.

Of particular interest to the EU is the issue of a requirement to include a visa number where applicable on the Passenger lists and the issue of fulfilment of reporting formalities in electronic format.

Certain differences between the FAL Convention and EU law still remain concerning Standard 2.6.1 (concerning the data required by the public authorities to be included in a Crew list), Standard 2.23, Standard 3.10, Standard 3.10.2, Standard 3.45 and Recommended Practice 3.21. In accordance with Article VIII of the FAL Convention, such differences shall be notified to the IMO Secretary-General by the Contracting Governments.

These changes to the Facilitation Convention are set out in Annex 1 to the FAL 39 report (FAL 39/16). Paragraph 4.43 of the FAL 39 report indicates that the changes will be adopted at FAL 40.

#### **1.2 Amendments to Regulations 1 and 11 of MARPOL Annex IV concerning Special Area requirements**

The 68<sup>th</sup> session of the Marine Environment Protection Committee (MEPC 68) considered whether sufficient notifications had been received on the availability of port reception facilities, in accordance with Regulation 13 of MARPOL Annex IV, to allow the Baltic Sea Special Area provisions to take effect, as well as to define the area for which the Special Area provisions could take effect, taking into account that the notification had only been provided by eight of the nine Baltic States.

It was agreed that sufficient notifications had been received and that therefore effective dates could be established for the entry into force of the Special Area as defined in document MEPC 68/10/2. It was established that the proposed definition of the area differed from the one defined in MARPOL Annex IV and that an

amendment to MARPOL Annex IV would be needed for the new definition of the Special Area as defined in document MEPC 68/10/2 to take effect.

These amendments to MARPOL Annex IV, Regulations 1 and 11, are set out in the Annex to document MEPC 69/3/3, with a view to adoption at MEPC 69, as indicated in paragraph 10.22 of the MEPC 68 report (MEPC 68/21). The amendments were circulated by the IMO Secretariat under cover of Circular Letter No.3591 of 7 October 2015 in accordance with Article 16 of MARPOL, including a draft MEPC resolution for their adoption.

### **1.3 Amendments to SOLAS Regulation II-2/13**

MSC 95 approved draft amendments to SOLAS Regulation II-2/13 which will establish requirements for evaluation of escape routes by an evacuation analysis early in the design process, which shall apply to new ro-ro passenger ships and other passenger ships carrying more than 36 passengers. The analysis shall be used to identify and eliminate, as far as practicable, congestion which may develop during abandonment, due to normal movement of passengers and crew along escape routes, including the possibility that crew may need to move along these routes in a direction opposite to the movement of passengers. In addition, the analysis shall be used to demonstrate that escape arrangements are sufficiently flexible to provide for the possibility that certain escape routes, assembly stations, embarkation stations or survival craft may not be available as a result of a casualty.

These changes are set out in Annex 14 in MSC 95/22/add.2. Paragraph 10.19 of the MSC 95 report (MSC 95/22) indicates that the changes will be adopted at MSC 96.

### **1.4 Amendments to SOLAS Regulation II-2/18 concerning helicopter landing areas on ro-ro passenger ships for new ships in conjunction with a new Chapter 17 to the Fire Safety Systems Code.**

Chapter II-2/18 of SOLAS contains requirements for helicopter facilities. These amendments to the SOLAS Convention aim to introduce IMO Circular MSC.1/Circ.1431 – Guidelines for the approval of helicopter facility foam fire-fighting appliances - from 22 June 2012, to make its provisions mandatory. The foam application system is thus required to be in accordance with the guidelines. These amendments were approved by the 92<sup>nd</sup> session of the Maritime Safety Committee (MSC 92), with a view to adoption at its 93<sup>rd</sup> session (MSC 93).

In relation to the foreseen adoption at MSC 93, the Council adopted Decision 2014/280/EU of 8 May 2013<sup>1</sup>, providing for a position for the EU to agree to the adoption of the amendments to SOLAS Regulation II-2/18.

However, at the adoption stage, MSC 93 decided to refer the draft amendments back to the 2<sup>nd</sup> session of the IMO Sub-Committee for Ship Systems and Equipment (SSE 2) for further consideration.

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<sup>1</sup> Council Decision 2014/280/EU on the position to be adopted on behalf of the European Union at the International Maritime Organization during the 93<sup>rd</sup> 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 OJ L 145, 16.5.2014, p. 40.

Following the outcome of SSE 2, in connection with the draft amendments to SOLAS regulation II-2/18, MSC 95 noted that SSE 2 had also prepared a new Chapter 17 to the Fire Safety Systems Code (FSS Code) concerning helicopter facility foam firefighting appliances for approval, with a view to adoption by MSC 96. As a result of the decision to prepare a new Chapter 17 to the FSS Code, SSE 2 requested MSC 95 to consider consequential modifications to the draft amendments to SOLAS regulation II-2/18, with a view to adoption by MSC 96 rather than by MSC 95, in conjunction with the adoption of the new Chapter 17 of the FSS Code.

Therefore, the modified amendments of SOLAS Regulation II-2/18 are included again in this proposal for a Council Decision as they will be further considered at MSC 96, with a view to adoption in conjunction with the new Chapter 17 of the FSS Code.

These changes to the amendments to SOLAS regulation II-2/18 are set out in Annex 2 in SSE 2/20. Paragraph 12.16 of the MSC 95 report (MSC 95/22) indicates that these amendments will be adopted at MSC 96. The new Chapter 17 to the FSS Code is set out in Annex 18, point 2, of the MSC 95 report (MSC 95/22/Add. 2). Paragraph 12.15 of the MSC 95 report (MSC 95/22) indicates that the new Chapter will be adopted at MSC 96.

### **1.5 Revised Chapter 8 of the Fire Safety Systems Code concerning automatic sprinkler, fire detection and fire alarm systems**

As a consequence of failures occurring in automatic sprinklers systems due to build-up or blockages with mineral deposits, MSC 95 approved draft amendments to Chapter 8 of the Fire Safety Systems Code (FSS Code) which provide that special attention shall be paid to the specification of water quality provided by the system manufacturer to prevent internal corrosion and clogging of sprinklers.

Manufacturers' instructions for commissioning, inspection and maintenance must include specifications for the quality of water to be used throughout the life of the system and the water quality must be actively monitored on-board.

These amendments are set out in Annex 18, point 1, in MSC 95/22/Add.2. Paragraph 12.11 of the MSC 95 report (MSC 95/22) indicates that the amendments will be adopted at MSC 96.

### **1.6 Amendments to the 2011 Enhanced Survey Programme (ESP) Code**

The IMO'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 concern the harmonisation of the use of terms related to recognised organisations throughout the Code. The proposed amendments are of an editorial nature. Therefore MSC 95 agreed that a corrigendum to annex 2 to the report of MSC 94 (MSC 94/21) would be prepared, with a view to incorporating the aforementioned modifications into the authentic text of resolution MSC.381(94) on amendments to the international code on the enhanced programme of inspections during surveys of bulk carriers and oil tankers, 2011 (2011 ESP Code).

These changes are set out in Annex 15 in MSC 95/22/Add.2. Para 10.26 of the MSC 95 report (MSC 95/22) indicates that these amendments will be adopted at MSC 96.

## **2. ADOPTION OF THE IMO AMENDMENTS**

### **2.1 Adoption of amendments**

The amendments set out in points 1.1 - 1.6 above were approved at the 39<sup>th</sup> session of the Facilitation Committee meeting between 22 to 26 September 2014, the 68<sup>th</sup> session of the Marine Environment Protection Committee meeting between 11 to 15 May 2015 and the 95<sup>th</sup> session of the Maritime Safety Committee meeting between 3 to 12 June 2015, and are to be submitted for adoption to the 40<sup>th</sup> session of the Facilitation Committee between 4 – 8 April 2016, the 69<sup>th</sup> session of the Marine Environment Protection Committee between 18 to 22 April 2016 and the 96<sup>th</sup> session of the Maritime Safety Committee between 11 to 20 May 2016.

### **2.2 Acceptance**

Once approved and adopted by the three Committees, the amendments set out in points 1.1 to 1.6 above will be communicated for acceptance to the respective Contracting Parties.

## **3. RELEVANT EU LEGISLATION AND EU COMPETENCE**

### **3.1 General review of the Facilitation Convention**

The scope of Directive 2010/65/EU of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC is to simplify and harmonize the administrative procedures applied to maritime transport by making electronic transmission of information mandatory and by rationalizing reporting formalities. The reporting formalities identified in the Annex to the Directive are classified in 3 categories: A) legal acts of the Union, B) the FAL forms and formalities in accordance with the FAL Convention and C) other formalities required by national legislation. The use of FAL forms within the EU is assessed and the information required by the legal acts of the Union and the FAL forms is mapped in order to ensure the use of electronic FAL form specifications where applicable. Article 7 of the Directive provides that Member States shall accept FAL forms for the fulfilment of reporting formalities and after 1 June 2015 in electronic format only.

The requirement to include a visa number where applicable on the Crew and Passenger lists results from Annex VI, point 3.1.2 of Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (included in point A.2 of the Annex to Directive 2010/65/EU).

Therefore the general review of the FAL Convention would affect Directive 2010/65/EU and Regulation (EC) No 562/2006.

### **3.2 Amendments to Regulations 1 and 11 of MARPOL Annex IV concerning Special Area requirements**

The issue of the existence of adequate port facilities is a matter falling under EU exclusive competence based on Article 4 of Directive 2000/59/EC of the European Parliament and of the Council on port reception facilities for ship generated waste and cargo residues. The commitment to provide for port reception facilities in line with Regulation 12bis of Resolution MEPC.200(62) affects the subject matter dealt with in that Directive. If adopted by the IMO, the draft amendments to MARPOL Annex IV to set effective dates for part of the Baltic Sea to be designated as a Special Area will be of a binding nature on the Union.

### **3.3 Amendments to SOLAS Regulation II-2/13 concerning evacuation analysis for passenger ships**

SOLAS Regulation II-2/13 regulates the issue of means of escape. The amendments to be adopted at MSC 96, which would introduce changes to SOLAS Regulation II-2/13, would affect EU law though the application of Directive 2009/45/EC of the European Parliament and of the Council 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 Directive 2009/45/EC contains detailed rules on escape routes on ro-ro passenger ships for Class B, C and D ships, as laid down in Annex I, Chapter II, Part B, part B.6-1.

### **3.4 Amendments to SOLAS Regulation II-2/18 concerning helicopter landing areas on ro-ro passenger ships for new ships in conjunction with a new Chapter 17 to the Fire Safety Systems Code**

The Union enacted through Chapter II-2 of Annex I of Directive 2009/45/EC requirements on the provision of helicopter landing areas. In particular, Regulation 18, Part B of this Chapter provides that "*ships equipped with helidecks shall comply with the requirements of Regulation 18 of Part G of the SOLAS Chapter II-2, as revised per 1 January 2003*". 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. As a result, the requirements provided in Directive 2009/45/EC on helicopter landing areas on ro-ro passenger ships for new ships would need to be revised would the amendments to SOLAS Regulation II-2/18 be adopted.

Furthermore, Chapter II-2, Part A, Regulation 2 of Annex I of Directive 2009/45/EC applies the Fire Safety Systems Code adopted by Resolution MSC.98(73), to Class B, C and D ships constructed on or after 1 January 2003.

Therefore, the amendments to SOLAS and the new Chapter 17 of the Fire Systems Safety Code to be adopted at MSC 96 would affect the requirements provided in Directive 2009/45/EC on helicopter landing areas, by framing any revisions of such rules.

### **3.5 Revised Chapter 8 of the Fire Safety Systems Code concerning automatic sprinkler, fire detection and fire alarm systems**

Chapter II-2, Part A, Regulation 8 of Annex I of Directive 2009/45/EC on automatic sprinkler, fire detection and fire alarm systems requires such systems to be capable of immediate operation at all times with no action of the crew necessary to set it in operation. 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, Chapter II-2, Part A, Regulation 8 of Annex I of Directive 2009/45/EC applies the Fire Safety Systems Code adopted by Resolution MSC.98(73), as amended, to Class B, C and D ships constructed on or after 1 January 2003.

Therefore, the amendments to Chapter 8 of the Fire Safety Systems Code would affect EU law through the application of Directive 2009/45/EC.

### **3.6 Amendments to the 2011 Enhanced Survey Programme (ESP) Code**

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 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.

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 applicable through Regulation (EU) No 530/2012. Therefore, the amendments due to be adopted at MSC 96, which would introduce changes to the ESP Code, would affect EU law, through the application of Regulation (EU) No 530/2012.

### **3.7 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 FAL 40, MEPC 69 and MSC 96 comes under EU exclusive external 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 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 – 1.6 above to be adopted at the 40<sup>th</sup> session of the Facilitation Committee, 69<sup>th</sup> session of the Marine Environment Protection Committee and the 96<sup>th</sup> 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 40<sup>th</sup> session of the Facilitation Committee, the 69<sup>th</sup> session of the Marine Environment Protection Committee and the 96<sup>th</sup> session of the Maritime Safety Committee on the adoption of amendments to the Facilitation Convention MARPOL Annex IV, SOLAS Regulations II-2/13 and II-2/18, the Fire Safety Systems Code and 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 and to protect the marine environment.
- (2) The Facilitation Committee (FAL) of the International Maritime Organization (IMO) meeting at its 39<sup>th</sup> session, approved amendments to the Facilitation Convention. Those amendments are expected to be adopted at the 40<sup>th</sup> session of the FAL to be held in April 2016.
- (3) The Marine Environment Protection Committee (MEPC) of the IMO meeting at its 68<sup>th</sup> session agreed that sufficient notifications pursuant to Regulation 12bis of MARPOL Annex IV had been received for part of the Baltic Sea to be designated as Special Area such that the effective date for the entry into force of such designation provided in Regulation 11.3 of Annex IV could be established for that Special Area. MEPC 68 concluded that amendments to MARPOL Annex IV, Regulations 1 and 11, would be needed for that portion of the special area to take effect and amendments to MARPOL Annex IV to that effect should be proposed. Those amendments are expected to be adopted in the 69<sup>th</sup> session of the MEPC to be held in April 2016.
- (4) The Maritime Safety Committee (MSC) of the IMO meeting at its 95<sup>th</sup> session approved amendments to SOLAS Regulations II-2/13 and II-2/18, International Code for Fire Safety Systems (FSS Code) and the 2011 Enhanced Survey Programme Code (ESP Code). Those amendments are expected to be adopted in the 96<sup>th</sup> session of the MSC to be held in May 2016.
- (5) The general review of the FAL Convention modernises its provisions, taking into account developments in the field of the transmission of information and data by

electronic means and the single window concept. It introduces in particular measures of relevance to the European Union concerning insertion of visa numbers in the passenger lists but not in crew lists and the right of authorities to make the use of electronic submissions of forms mandatory. Articles 5 and 7 of Directive 2010/65/EU of the European Parliament and of the Council<sup>2</sup> establishes that reporting formalities for ships arriving in and departing from ports situated in Member States shall be accepted only in electronic format via a single window as of 1 June 2015 and that Member States shall accept FAL forms on paper for the fulfilment of reporting formalities until that date. Information required in accordance with a legal act of the Union has to be provided in electronic format as of 1 June 2015. The requirement to include a visa number where applicable in the crew and passenger lists results from Annex VI, point 3.1.2 of Regulation (EC) No 562/2006 of the European Parliament and of the Council.<sup>3</sup> These requirements impose stricter obligations than the relevant rules foreseen by the FAL Convention and represent a difference within the meaning of Article VIII of that Convention. Member States as Contracting Parties to the FAL Convention should therefore notify this difference to the IMO.

- (6) The amendments to MARPOL Annex IV are intended to provide the legal framework to implement the agreement by MEPC 68 that sufficient notifications had been received on the availability of port reception facilities to allow the Baltic Sea Special Area provisions to take effect and that, therefore, effective dates could be established for the entry into force of the designation of the part of the Baltic Sea as a Special Area, in conformity with those notifications. Article 4 of Directive 2000/59/EC of the European Parliament and of the Council<sup>4</sup> covers the issue of availability of port reception facilities, which is also covered by Regulation 12bis of Resolution MEPC.200(62), for the purpose of reducing discharges of ship-generated waste and cargo residues into the sea, especially illegal discharges, from ships using ports in the Union.
- (7) The amendments to SOLAS Regulation II-2/13 will introduce requirements for evaluation of escape routes by an evacuation analysis early in the design process, which shall apply to new ro-ro passenger ships and other passenger ships carrying more than 36 passengers. Article 6(2)(a)(i) of Directive 2009/45/EC of the European Parliament and of the Council<sup>5</sup> establishes that new passenger ships of Class A shall comply entirely with the requirements of the 1974 SOLAS Convention, as amended. Furthermore Directive 2009/45/EC contains detailed rules on escape routes on ro-ro passenger ships for Class B, C and D ships, as laid down in Annex I, Chapter II, Part B, paragraph 6-1.
- (8) The amendments to SOLAS Regulation II-2/18 concerning helicopter landing areas on new ro-ro passenger ships will make the provisions of IMO Circular MSC.1/Circ.1431 of 31 May 2012 on Guidelines for the approval of helicopter facility foam fire-fighting

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<sup>2</sup> Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC, OJ L 283, 29.10.2010, p. 1.

<sup>3</sup> Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 105, 13.4.2006, p. 1.

<sup>4</sup> Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332 28.12.2000, p. 81).

<sup>5</sup> 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).

appliances mandatory. Regulation 18, Part B, Chapter II-2 of Annex I to Directive 2009/45/EC of the European Parliament and of the Council provides that ships equipped with helidecks shall comply with the requirements of the SOLAS regulation as revised per 1 January 2003 which are now expected to be amended.

- (9) The revised Chapter 8 of the Fire Safety Systems (FSS) Code will provide that special attention shall be paid to the specification of water quality provided by the system manufacturer to prevent internal corrosion and internal clogging of sprinklers. Article 6(2)(a)(i) of Directive 2009/45/EC of the European Parliament and of the Council establishes that new passenger ships of Class A shall comply entirely with the requirements of the 1974 SOLAS Convention, as amended, which embeds the FSS Code as made mandatory under SOLAS by IMO resolution MSC.99(73). Furthermore Directive 2009/45/EC of the European Parliament and of the Council contains detailed rules on Fire Extinction for Class B, C and D ships, as laid down in Annex I, Chapter II-2, Part A, paragraphs 4.5 and 4.8.
- (10) The new Chapter 17 to the FSS Code will further detail the specifications for foam firefighting appliances for the protection of helicopter facilities as required by Chapter II-2 of SOLAS. Article 6(2)(a)(i) of Directive 2009/45/EC of the European Parliament and of the Council establishes that new passenger ships of Class A shall comply entirely with the requirements of the 1974 SOLAS Convention, as amended which embeds the FSS Code as made mandatory under SOLAS by IMO resolution MSC.99(73). Furthermore Directive 2009/45/EC contains detailed rules on the special requirements for helicopter facilities for Class B, C and D ships, as laid down in Annex I, Chapter II, Part B, paragraph 18.
- (11) The amendments to the 2011 ESP Code are intended to harmonize the use of terms related to recognised organisations. Articles 5 and 6 of Regulation (EU) No 530/2012 of the European Parliament and of the Council<sup>6</sup> 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.
- (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.

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<sup>6</sup> Regulation (EU) No 530/2012 of the European Parliament and of the Council of 13 June 2012 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 40<sup>th</sup> session of the IMO Facilitation Committee shall be to agree to the adoption of the amendments to the Facilitation Convention as laid down in Annex 1 to IMO Document FAL 39/16.
2. Where applicable, Member States shall make the notification required by Article VIII of the FAL Convention to the Secretary-General of IMO as regards amendments referred to in paragraph 1 as soon as possible after the entry into force of those amendments.

*Article 2*

The position of the Union at the 69<sup>th</sup> session of the IMO Marine Environment Protection Committee shall be to agree to the adoption of the amendments to MARPOL Annex IV, Regulations 1 and 11, as laid down in the Annex in IMO Document MEPC 69/3/3.

*Article 3*

The position of the Union at the 96<sup>th</sup> session of the IMO Maritime Safety Committee shall be to agree to the adoption of the following amendments to:

- SOLAS Regulation II-2/13 as laid down in Annex 14 of IMO Document MSC 95/22/add.2.
- SOLAS Regulation II-2/18 as laid down in Annex 2 of IMO Document SSE 2/20.
- Chapter 8 of the Fire Safety Systems Code as laid down in Annex 18, point 1, of IMO Document 95/22/add.2.
- Chapter 17 of the Fire Safety Systems Code as laid down in Annex 18, point 2, of IMO Document 95/22/add.2.
- The 2011 Enhanced Survey Programme Code as laid down in Annex 15 of IMO Document 95/22/add.2.

*Article 4*

1. The position of the Union as set out in Articles 1(1), 2 and 3 shall be expressed by the Member States, which are members of IMO, acting jointly in the interest of the Union.
2. Formal and minor changes to the positions referred to in Articles 1, 2 and 3 may be agreed without requiring that 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, 2 and 3.

*Article 6*

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*