



Council of the
European Union

136656/EU XXVII. GP
Eingelangt am 04/04/23

Brussels, 31 March 2023
(OR. en)

8026/23

Interinstitutional File:
2023/0092(NLE)

MAR 48
OMI 28

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	31 March 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 181 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the International Maritime Organization during the 107 th session of the Maritime Safety Committee on the adoption of amendments to the International Convention for the Safety of Life at Sea (SOLAS), the International Code of Safety for High-speed Craft, 1994 (1994 HSC Code) , the 2000 HSC Code, the International Code for Ships Operating in Polar Waters (Polar Code), the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978 (STCW) and Code and to the International Life-Saving Appliances (LSA) Code

Delegations will find attached document COM(2023) 181 final.

Encl.: COM(2023) 181 final



EUROPEAN
COMMISSION

Brussels, 31.3.2023

COM(2023) 181 final

2023/0092 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Maritime Organization during the 107th session of the Maritime Safety Committee on the adoption of amendments to the International Convention for the Safety of Life at Sea (SOLAS), the International Code of Safety for High-speed Craft, 1994 (1994 HSC Code) , the 2000 HSC Code, the International Code for Ships Operating in Polar Waters (Polar Code), the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978 (STCW) and Code and to the International Life-Saving Appliances (LSA) Code

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf at the 107th session of the International Maritime Organization's Maritime Safety Committee (MSC 107), taking place from 31 May to 9 June 2023.

During MSC 106, it was envisaged that MSC 107 would adopt amendments to:

- (1) to chapter II-2 of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and to the International Code of Safety for High-speed Craft, 1994 (1994 HSC Code) and 2000 HSC Code;
- (2) to chapter XIV of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and to the International Code for Ships Operating in Polar Waters (Polar Code);
- (3) to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) and Code;
- (4) and to the International Life-Saving Appliances (LSA) Code

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on the International Maritime Organization

The Convention on the International Maritime Organization (IMO) establishes the IMO. The IMO's purpose is to provide a forum for co-operation in the field of regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade. It furthermore aims to encourage the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships, promoting a level playing field. It also to deal with related administrative and legal matters.

The Convention entered into force on 17 March 1958.

All Member States are parties to the Convention. The Union is not a party to the Convention.

All Member States are parties to the International Convention for the Safety of Life at Sea ('SOLAS'), 1974, which entered into force on 25 May 1980. The Union is not a party to SOLAS.

2.2. The International Maritime Organization

The International Maritime Organization (IMO) is the United Nations' specialised agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. It is the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented.

Membership in the IMO is open to all States and all EU Member States are IMO members. The EU's relations with IMO are based notably on the Arrangement for Co-operation and Collaboration concluded between the Inter-Governmental Maritime Consultative Organisation (IMCO) and the Commission of the European Communities in 1974.

IMO's Maritime Safety Committee consists of all the IMO Members and meets at least once a year. It considers any matter within the scope of the Organization concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, log-books and navigational records, marine casualty investigation, salvage and rescue, and any other matters directly affecting maritime safety.

IMO's Marine Environment Protection Committee also consists of all the IMO Members and meets at least once a year. It addresses environmental issues under the scope of the Organization as regards the control and prevention of ship-source pollution covered by the MARPOL treaty, including oil, chemicals carried in bulk, sewage, garbage and emissions from ships to air, including air pollutants and greenhouse gas emissions. Other matters covered include ballast water management, anti-fouling systems, ship recycling, pollution preparedness and response, and identification of special areas and particularly sensitive sea areas.

Both IMO's Maritime Safety Committee and Marine Environment Protection Committee provide machinery for performing any duties assigned to them by the IMO Convention, the IMO Assembly or the IMO Council, or any duty within the above scope which may be assigned to them by or under any other international instrument and accepted by the IMO. Decisions of the Maritime Safety Committee and the Marine Environment Protection Committee, and of their subsidiary bodies, are adopted by a majority of their Members.

2.3. The envisaged act of the IMO's Maritime Safety Committee

During its session from 31 May to 9 June 2023, MSC 107 is to adopt amendments to SOLAS chapter II-2 and 1994 and 2000 HSC Codes on the perfluorooctane sulfonic acid (PFOS) prohibition, SOLAS chapter XIV and the Polar Code on fishing vessel safety, to STCW Convention and Code on use of electronic certificates, and to the LSA Code on ventilation standards in totally enclosed lifeboats.

The purpose of the envisaged amendments to SOLAS Chapter II-2 and the 1994 and 2000 HSC Codes is to prohibit the use of fire-fighting foams containing PFOS in marine fire-fighting.

The purpose of the envisaged amendments to SOLAS Chapter XIV and the Polar Code is to enhance safety standards for non-SOLAS ships operating in Polar waters.

The purpose of the envisaged amendments to STCW Convention and Code is to introduce the use of electronic certificates of seafarers in order to facilitate the work, reduce the administrative burden for flag Administrations, port State control officers and seafarers and allow for a faster identification of fraudulent certificates.

The purpose of the envisaged amendments to the LSA Code is to enhance safety requirements with respect to ventilation standards in totally enclosed lifeboats.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

3.1. Amendments to chapter II-2 of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and to the International Code of Safety for High-speed Craft, 1994 (1994 HSC Code) and 2000 HSC Code

MSC 101 approved a new output to prohibit the use of PFOS in new fire-extinguishing systems, which was supported by the Union. MSC 101 added it in the post biennial agenda of the Sub-Committee on the Ship Systems and Equipment (SSE).

SSE 7 agreed to expand the scope of the output on "Development of provisions to prohibit the use of fire-fighting foams containing perfluorooctane sulfonic acid (PFOS) for fire-fighting on board ships" to include other regulations of SOLAS chapter II-2 and other instruments with a view of approval by MSC 102. Union supported the inclusion of this new output on the agenda of SSE 8.

MSC 102 agreed to expand the scope of the output and to include it on the agenda of SSE 8, which was supported by the Union.

SSE 8 agreed to the draft amendments to SOLAS chapter II-2, and the 1994 and 2000 HSC Codes on the prohibition of PFOS. At SSE 8, the Union's position was to support the proposed draft amendments for SOLAS CHAPTER II-2 and amendments to the 1994 and 2000 HSC Codes and proposed that they are referred to a working group to finalise the amendments to SOLAS and the HSC Codes.

MSC 106 approved draft amendments to SOLAS chapter II-2 and the 1994 and 2000 HSC Codes (paragraph 11.29 of the MSC 106 report (MSC 106/19), with a view to adoption at MSC 107.

At MSC 106, the Union's position was to support the approval of the draft amendments to SOLAS chapter II-2 and the 1994 and 2000 HSC Codes.

The Union position should be to support these amendments, as PFOS was a harmful substance both to human health and to the marine environment and these amendments will prohibit the use of fire-fighting foams containing PFOS in marine fire-fighting.

3.2. Amendments to chapter XIV of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and the Polar Code

MSC 100 considered proposed amendments to SOLAS chapter XIV to facilitate the mandatory application of certain provisions to fishing vessels. In addition, MSC 100 considered making mandatory certain methodologies for determining a ship's operational capabilities in ice as an essential element of voyage planning (Polar Code, chapter 11), and asserts that a case can be made to make mandatory the carriage of a Polar Code's Polar Water Operational Manual (PWOM) or elements of it.

At MSC 100, the Union's position was to support, in terms of fishing vessels, that MSC 100 further explores the proposals amendments to SOLAS chapter XIV and Polar Code.

At MSC 101, the Committee considered the extension of the Polar Code provisions to non-SOLAS ships and a proposal for a draft Assembly resolution urging Member States to take steps, on a voluntary basis, to implement the safety measures of the Polar Code to non-SOLAS ships.

MSC 101 subsequently approved the draft Assembly resolution on interim safety measures for ships not certified under the SOLAS Convention operating in Polar Waters and decided to refer to NCSR 7 to consider the consequences and feasibility of applying chapters 9 and 11 of the Polar Code to non-SOLAS ships as well as to determine how best to enhance the safety of non-SOLAS ships, including possible development of amendments to SOLAS and/or the Polar Code.

At MSC 101, the Union's position was to

1. support in principle the proposal to refer this issue to NCSR for further consideration;
2. support, in terms of fishing vessels, the development of a draft Assembly Resolution.

At its 7th meeting of the Sub-Committee on Navigation, Communications and Search and Rescue (NCSR), the Sub-Committee agreed to establish a Correspondence Group under the coordination of New Zealand.

At NCSR 7, the Union's position was to support in general the proposal to initiate the consideration of technical issues around the feasibility and consequences of applying chapters 9 and 11 of the Polar Code to non-SOLAS ships.

At NCSR 8, the Sub-Committee, agreed that:

- (1) the draft amendments to the Polar Code to be developed should be limited to the existing parts I-A and I-B, with possible consequential amendments to the Introduction part;
- (2) the scope of the application of the relevant regulations to be developed in part I-A of the Polar Code should be extended, as a minimum, to all voyages operating in polar waters for fishing vessels of 24 metres and above, pleasure yachts of 300 gross tonnage and above not engaged in trade, and cargo ships of 300 gross tonnage and above but below 500 gross tonnage; and
- (3) draft amendments to SOLAS chapter XIV should be developed in order to extend the application of the Polar Code to other ships as well as to address exemptions and discretions.

In order to progress this issue further the Sub-Committee finally agreed to re-establish the Correspondence Group on Safety Measures for Non-SOLAS Ships Operating in Polar Waters.

At NCSR 8, the Union's position was to support the re-establishment of the Correspondence Group to further develop the text of chapters 9 and 11 as well as to develop draft text for an amendment to the SOLAS Convention, in particular for fishing vessels and recreational craft;

At NCSR 9, the Union's position was to, as regards fishing vessels and recreational craft, support the draft amendments to SOLAS chapter XIV as well as the draft amendments to parts I-A and I-B of the Polar Code.

At MSC 106, the Committee approved the envisaged amendments to SOLAS chapter XIV and the Polar Code (paragraph 13.9 of the MSC 106 report (MSC 106/19)), with a view to adoption by MSC 107 and entry into force on 1 January 2026.

At MSC 106, the Union position was to support the draft amendments to SOLAS chapter XIV as well as the draft amendments to parts I-A and I-B of the Polar Code

The Union position should be to support these amendments, as they will enhance the safety standards for non-SOLAS ships operating in Polar waters.

3.3. Amendments to the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978 (STCW) and Code

The Sub-Committee on Human Element, Training and Watchkeeping (HTW), at its 5th meeting, considered proposing proposal on a draft unified interpretation of STCW regulation I/2 intended to clarify the meaning of the term "original form" for seafarers' certificates in view of the possibility to use electronic certificates for the purposes of the STCW Convention as is already the practice for other Conventions. In fact, the IMO has already developed Guidelines for the use of electronic certificates (FAL.5/Circ.39/Rev.2). However, there were divergent views at HTW 5 whether the latter Guidelines already allow for electronic STCW certification.

The Union position at HTW 5 was to support the proposal to clarify the meaning of the term "original form" (regulation I/2 of STCW Convention) to allow for the recognition of certificates in electronic form.

At its 100th meeting, the Maritime Safety Committee (MSC), agreed to include in the biennial agenda of the HTW Sub-Committee and the provisional agenda for HTW 6 an output on "Development of amendments to the STCW Convention and Code for the use of electronic certificates and documents of seafarers", with a target completion year of 2020, in association with the III Sub-Committee as and when requested by the HTW Sub-Committee. MSC 100 also agreed to inform the FAL Committee of the new output since the FAL Committee had approved the Guidelines for the use of electronic certificates (FAL.5/Circ.39/Rev.2).

At MSC 100, the Union's position was to support the proposal for a new output to address the use of electronic certificates pursuant to the STCW Convention and Code.

HTW 6 noted that the best way forward would be to start the discussion of this issue in a correspondence group. The EU position at HTW 6 was to support the establishment of a correspondence group.

HTW 7, after discussing the report of the Correspondence Group recognized that further work and consideration was necessary with regard to amending relevant regulations of the STCW Convention, provisions of parts A and B of the STCW Code and the development of draft guidelines. Therefore, it re-established the Correspondence Group.

The Union's position at HTW 7 was to support, in general, the work of the Correspondence Group and propose that the report is referred to a working group to be established at HTW 8 to finalise the draft amendments to the STCW and the draft Guidelines.

HTW 8 noted the considerable progress of the Correspondence Group in developing the draft amendments to the STCW Convention and Code on the use of electronic certificates of seafarers and the draft guidelines on the use of electronic certificates of seafarers and the associated draft STCW.7 circular. The Union supported the work of the Correspondence Group and proposed that the report is referred to a working group.

MSC 106 approved the draft amendments to regulations I/1 and I/2 of the STCW Convention and to section A-I/2 of the STCW Code (paragraphs 10.4 and 10.5 of the MSC 106 report (MSC 106/19)), with a view to adoption at MSC 107.

At MSC 106, the Union position was to support the approval of draft amendments to STCW regulations I/1 and I/2, and section A-I/2 of the STCW Code related to the use of electronic certificates.

The Union position should be to support these amendments, as digitalisation of STCW certificates would facilitate the work and reduce the administrative burden for flag Administrations, port State control officers and seafarers. It could also allow for a faster identification of fraudulent certificates.

3.4. Amendments to the International Life-Saving Appliances (LSA) Code

The Maritime Safety Committee (MSC), at its 97th session, established a new output concerning requirements for the ventilation of totally enclosed lifeboats, which was supported by the Union.

The Sub-Committee on Ship Systems and Equipment (SSE), at its 4th meeting, established the Life Saving Appliance (LSA) Correspondence Group, under the coordination of the United

States, to gather the required data, to identify the possible criteria on which the new ventilation requirements should be based, and to recommend the criteria to be used for the draft amendments to paragraph 4.6.6.1 of chapter IV of the LSA Code, and draft amendments to resolution MSC.81(70).

At SSE 4, the Union's position was to support in principle further discussion within a working group of the draft amendments to the LSA Code and to Resolution MSC.81 (70).

At its 5th meeting, SSE agreed that:

1. for totally enclosed lifeboats, the ventilation/air exchange rate based on microclimate parameters should be the criterion set out in the draft amendments to the LSA Code without precluding either active or passive ventilation methods;
2. CO₂ concentration should not exceed 5,000 ppm, requiring a ventilation rate of at least 5 m³/h per person and the new ventilation requirements should apply to all new-built totally enclosed lifeboats installed on board a ship after the entry-into-force date of the amendments; and
3. a habitable environment should be maintained for a period of time of not less than 24hrs for lifeboats, in general, while a longer period may be required for survival craft of ships operating in polar waters.

Finally, SSE 5 agreed to the draft amendments to the LSA Code regarding ventilation on totally enclosed lifeboats, for eventual submission to the MSC for approval once the related amendments to the LSA Code regarding ventilation on survival craft other than totally enclosed lifeboats were finalized. The latter amendments were referred to a correspondence group for further consideration.

At SSE 5, the Union's position was to support further discussion within a working group of the draft amendments to the LSA Code and to Resolution MSC.81 (70).

Due to time constraints, SSE 6 established a correspondence group with a view towards finalization at SSE 7. The target completion date was extended to 2021.

SSE 7 agreed to the draft amendments to the LSA Code regarding ventilation on survival craft other than totally enclosed lifeboats. As regards the resolution MSC.81(70), SSE 7 agreed to the draft amendments with respect to paragraphs 6.10 (Lifeboat operational test) and 6.14 (Additional tests for totally enclosed lifeboats). Therefore, the Sub-Committee re-established the Correspondence Group on Life-Saving Appliances to finalise the draft amendments to the Revised recommendation on testing of life-saving appliances (resolution MSC.81(70)) for testing of the means of ventilation for partially enclosed lifeboats.

At SSE 7, Union's position was to support further discussion within the LSA working group on the draft amendments to the LSA Code and to Resolution MSC.81(70).

SSE 8 agreed to:

1. the draft MSC resolution on Amendments to the International Life-Saving Appliances (LSA) Code (in relation to the ventilation requirements for survival craft in chapter IV), including the application provision and the associated draft MSC resolution;
2. the draft amendments to the Revised Recommendation (resolution MSC.81(70)), for adoption at MSC 107, in conjunction with the adoption of the associated LSA Code amendments (see paragraph 3.21), as set out in annex 2.

At SSE 8, the Union supported further discussion within the LSA working group on the draft amendments to Resolution MSC.81(70) with a view to finalisation at this session to allow the

draft amendments to the LSA Code and Resolution MSC.81(70) to enter into force as a package on 1 January 2026;

MSC 106 approved the draft amendments to the LSA Code or totally enclosed lifeboats and to the Revised recommendation on testing of life-saving appliances (Revised Recommendation) (resolution MSC.81(70)) for totally enclosed lifeboats (paragraphs 11.4.1 and 11.6.1 of the MSC 106 report (MSC 106/19)), with a view to adoption at MSC 107.

At MSC 106, the Union's position was to support the draft amendments to the LSA Code or totally enclosed lifeboats and to the Revised recommendation on testing of life-saving appliances (Revised Recommendation) (resolution MSC.81(70)) for totally enclosed lifeboats and recall the importance to adopt the draft amendments for totally enclosed lifeboats.

The Union position should be to support these amendments as they enhance safety requirements with respect to ventilation standards in totally enclosed lifeboats.

3.5. Relevant EU legislation and EU competence

3.5.1. Amendments to chapter II-2 of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and to the International Code of Safety for High-speed Craft, 1994 (1994 HSC Code) and 2000 HSC Code

Regulation (EU) 2019/1021 on persistent organic pollutants¹. It prohibits new installations, which use PFOS and its derivatives.

Regulation (EU) 1257/2013 on ship recycling². The Ship Recycling Regulation sets out a number of additional requirements that go beyond those set in the Hong Kong Convention, including two additional Hazardous Materials (PFOS and HBCDD) in its Annexes.

Therefore, the amendments to SOLAS chapter II-2 and the 1994 and 2000 HSC Codes will affect the requirements applicable under Regulation (EU) 2019/1021 and Regulation (EU) 1257/2013.

3.5.2. Amendments to chapter XIV of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and the Polar Code

Directive 97/70/EC setting up a harmonised safety regime for fishing vessels of 24 metres in length and over.³ It includes provisions in Annex III on 'Northern regional provisions', setting out technical provisions for fishing vessels operating in areas including polar waters.

Directive 2013/53/EU on recreational craft and personal watercraft.⁴ It regulates the design and construction of recreational craft from 2.5 up to 24 meters and of personal watercraft from 0 up to 4 meters.

Commission Implementing Regulation (EU) 2022/1157⁵ laying down rules for the application of Directive 2014/90/EU⁶ on marine equipment, as regards design, construction and

¹ OJ L 169, 25.6.2019, p. 45.

² OJ L 330, 10.12.2013, p. 1.

³ OJ L 34, 9.2.1998, p. 1.

⁴ OJ L 354, 28.12.2013, p. 90

⁵ OJ L 180, 6.7.2022, p. 1

⁶ OJ L 257, 28.8.2014, p. 146

performance requirements and testing standards for marine equipment and repealing Implementing Regulation (EU) 2021/1158.

Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system.⁷ It includes provisions related to ships operating in ice conditions. Article 18 requires competent authorities: 1) to supply the master of a ship which is in their area of competence “with appropriate information on the ice conditions, the recommended routes and the icebreaking services in their area of competence”; and 2) to document that ships satisfy the strength and power requirements commensurate with the ice situation in the area concerned. In addition, there are Automatic Identification Systems (AIS) (Class A) carrier requirements in Art 6a, covering fishing vessels of more than 15 m. The same requirement is found in Article 10 of Council Regulation 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (the Fisheries Control regulation) and applies to EU flagged vessels.

Therefore, the amendments to SOLAS chapter XIV and the Polar Code will affect the requirements applicable under Directive 97/70/EC, Directive 2013/53/EU, Directive 2014/90/EU and Directive 2002/59/EC.

3.5.3. *Amendments the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978 (STCW) and Code*

Directive (EU) 2022/993 on the minimum level of training of seafarers⁸ includes provisions related to digital certificates:

- Article 4 paragraph 11 states that “Subject to Article 20(7), any certificate required by this Directive shall be kept available in its original form on board the ship on which the holder is serving, in a hard copy or in a digital format, the authenticity and validity of which may be verified under the procedure laid down in paragraph 13, point (b), of this Article.”
- Article 4 paragraph 14 provides that “When relevant amendments to the STCW Convention and Part A of the STCW Code related to digital certificates for seafarers come into force, the Commission is empowered to adopt delegated acts in accordance with Article 30 to amend this Directive by aligning all the relevant provisions thereof with those amendments to the STCW Convention and Part A of the STCW Code in order to digitalise the seafarers' certificates and endorsements.”
- Article 6 (Mutual recognition of seafarers' certificates issued by Member States) provides that “Every Member State shall accept certificates of proficiency and documentary evidence issued by another Member State, or under its authority, in hard copy or in digital format, for the purpose of allowing seafarers to serve on ships flying its flag.”

Therefore, the amendments to STCW Convention and Code will affect the requirements applicable under Directive (EU) 2022/993.

⁷ OJ L 208, 5.8.2002, p. 10

⁸ OJ L 169, 27.6.2022, p. 45

3.5.4. Amendments to the International Life-Saving Appliances (LSA) Code

Lifeboats and survival craft standards as well as Resolution MSC.81(70) form part of the Annex to Commission Implementing Regulation (EU) 2022/1157 laying down rules for the application of Directive 2014/90/EU⁹ on marine equipment, as regards design, construction and performance requirements and testing standards for marine equipment and repealing Implementing Regulation (EU) 2021/1158¹⁰.

In addition, Article 6(2)(a)(i) of Directive 2009/45/EC on safety rules and standards for passenger ships¹¹ applies SOLAS, as amended, to Class A passenger ships, while Annex I, Chapter III Life Saving Appliances, lays down various and extensive requirements for Class B, C and D passenger ships when engaged in domestic voyages also concerning totally enclosed lifeboats.

Therefore, the amendments to LSA Code will affect the requirements applicable under Directive 2014/90/EU and Directive 2009/45/EC.

3.5.5. EU competence

The amendments to SOLAS chapter II-2 and the 1994 and 2000 HSC Codes would affect Union law, in particular the application of Regulation (EU) 2019/1021 and Regulation (EU) 1257/2013.

The amendments to SOLAS chapter XIV and the Polar Code would affect Union law, in particular the application of Directive 97/70/EC, Directive 2013/53/EU, Directive 2014/90/EU 2020/1170 and Directive 2022/59/EC.

The amendments to the STCW Convention and Code would affect Union law, in particular the application of Directive (EU) 2022/993.

The amendments to the LSA Code would affect Union law, in particular the application of Directive 2014/90/EU and Directive 2009/45/EC.

The subject matter of the envisaged acts therefore concerns an area for which the Union has exclusive external competence by virtue of the last limb of Article 3(2) TFEU.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement.¹²

The concept of *‘acts having legal effects’* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do

⁹ OJ L 257, 28.8.2014, p. 146

¹⁰ OJ L 180, 6.7.2022, p. 1

¹¹ OJ L 163, 25.6.2009, p. 1

¹² Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraph 64.

not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’.¹³

4.1.2. Application to the present case

The IMO’s Maritime Safety Committee is set up by an agreement, the Convention on the International Maritime Organization.

The acts which this IMO committee are called upon to adopt constitute acts having legal effects. The envisaged acts are capable of decisively influencing the content of the following EU legislation and notably:

- Regulation (EU) 2019/1021 on persistent organic pollutants. This is because it prohibits new installations, which use PFOS and its derivatives.
- Regulation (EU) 1257/2013 on ship recycling. This is because it sets out a number of additional requirements, including two additional Hazardous Materials (PFOS and HBCDD) in its Annexes.
- Directive 97/70/EC setting up a harmonised safety regime for fishing vessels of 24 metres in length and over. This is because it includes provisions in Annex III on ‘Northern regional provisions’, setting out technical provisions for fishing vessels operating in areas including polar waters.
- Directive 2013/53/EU on recreational craft and personal watercraft. This is because it regulates the design and construction of recreational craft from 2.5 up to 24 meters and of personal watercraft from 0 up to 4 meters.
- Directive 2014/90/EU on marine equipment. This is because the design, construction and performance requirements and testing standards for marine equipment used on board ships is regulated by Commission Implementing Regulation (EU) 2022/1157.
- Directive 2002/59/EC establishing a Community vessel traffic and monitoring system. This is because it includes provisions related to ships operating in ice conditions. Article 18 requires competent authorities: 1) to supply the master of a ship which is in their area of competence “with appropriate information on the ice conditions, the recommended routes and the icebreaking services in their area of competence”; and 2) to document that ships satisfy the strength and power requirements commensurate with the ice situation in the area concerned. In addition, there are Automatic Identification Systems (AIS) (Class A) carrier requirements in Art 6a, covering fishing vessels of more than 15 m. The same requirement is found in Article 10 of Council Regulation 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (the Fisheries Control regulation) and applies to EU flagged vessels.
- Directive (EU) 2022/993 on the minimum level of training of seafarers. This is because it includes several provisions related to digital certificates. Article 4 paragraph 11 states that “Subject to Article 20(7), any certificate required by this Directive shall be kept available in its original form on board the ship on which the holder is serving, in a hard copy or in a digital format, the authenticity and validity of which may be verified under the procedure laid down in paragraph 13, point (b), of this Article.” Article 4 paragraph 14 provides that “When relevant amendments to the STCW Convention and Part A of the STCW Code related to digital certificates for

¹³ Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

seafarers come into force, the Commission is empowered to adopt delegated acts in accordance with Article 30 to amend this Directive by aligning all the relevant provisions thereof with those amendments to the STCW Convention and Part A of the STCW Code in order to digitalise the seafarers' certificates and endorsements.” Article 6 (Mutual recognition of seafarers' certificates issued by Member States) provides that “Every Member State shall accept certificates of proficiency and documentary evidence issued by another Member State, or under its authority, in hard copy or in digital format, for the purpose of allowing seafarers to serve on ships flying its flag.”

- Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment. This is because lifeboats and survival craft standards as well as Resolution MSC.81(70) form part of the Annex to Commission Implementing Regulation (EU) 2022/1157.
- Directive 2009/45/EC on safety rules and standards for passenger ships. This is because Article 6(2)(a)(i) applies SOLAS, as amended, to Class A passenger ships, while Annex I, Chapter III Life Saving Appliances, lays down various and extensive requirements for Class B, C and D passenger ships when engaged in domestic voyages also concerning totally enclosed lifeboats.

Therefore, the adoption of the amendments to

- chapter II-2 of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and to the International Code of Safety for High-speed Craft, 1994 (1994 HSC Code) and 2000 HSC Code
- chapter XIV of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and the Polar Code
- the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978 (STCW) and Code and
- the International Life-Saving Appliances (LSA) Code

are capable of decisively influencing the content of the following EU legislation, in particular Regulation (EU) 2019/1021 on persistent organic pollutants, Regulation (EU) 1257/2013 on ship recycling, Directive 97/70/EC setting up a harmonised safety regime for fishing vessels of 24 metres in length and over, Directive 2013/53/EU on recreational craft and personal watercraft, Directive 2014/90/EU on marine equipment, Directive 2002/59/EC establishing a Community vessel traffic and monitoring system, Directive (EU) 2022/993 on the minimum level of training of seafarers, Directive 2009/45/EC on safety rules and standards for passenger ships.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely

incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to maritime transport. Therefore, the substantive legal basis of the proposed decision is Article 100(2) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 100(2) TFEU, in conjunction with Article 218(9) TFEU.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Maritime Organization during the 107th session of the Maritime Safety Committee on the adoption of amendments to the International Convention for the Safety of Life at Sea (SOLAS), the International Code of Safety for High-speed Craft, 1994 (1994 HSC Code), the 2000 HSC Code, the International Code for Ships Operating in Polar Waters (Polar Code), the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978 (STCW) and Code and to the International Life-Saving Appliances (LSA) 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), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Convention on the International Maritime Organization ('IMO') entered into force on 17 March 1958.
- (2) The IMO is a specialised agency of the United Nations with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships. All Union Member States are members of the IMO. The Union is not a member of the IMO.
- (3) Pursuant to Article 28(b) of the Convention on the IMO, the Maritime Safety Committee provides machinery for the performance of any duties assigned to it in accordance with that Convention, by the IMO Assembly or by the IMO Council, or any duty within the scope of that Article which may be assigned to the Maritime Safety Committee under any other international instrument and accepted by the IMO.
- (4) The Maritime Safety Committee, during its 107th session from 31 May to 9 June 2023, is to adopt amendments to chapter II-2 of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and to the International Code of Safety for High-speed Craft, 1994 (1994 HSC Code) and 2000 HSC Code, chapter XIV of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and the International Code for Ships Operating in Polar Waters (Polar Code), the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978 (STCW) and Code and the International Life-Saving Appliances (LSA) Code.
- (5) It is appropriate to establish the position to be taken on the Union's behalf during the 107th session of the Maritime Safety Committee, as the envisaged amendments to SOLAS chapter II-2 and the 1994 and 2000 HSC Codes, to chapter XIV of SOLAS Convention and the Polar Code, to STCW Convention and Code and to the LSA Code are capable of decisively influencing the contents of Union law, namely Regulation

(EU) 2019/1021 on persistent organic pollutants¹, Regulation (EU) 1257/2013 on ship recycling², Directive 97/70/EC setting up a harmonised safety regime for fishing vessels of 24 metres in length and over³, Directive 2013/53/EU on recreational craft and personal watercraft⁴, Directive 2014/90/EU on marine equipment⁵, Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system⁶, Directive (EU) 2022/993 on the minimum level of training of seafarers⁷, Directive 2009/45/EC on safety rules and standards for passenger ships⁸.

- (6) The envisaged amendments to SOLAS Chapter II-2 and the 1994 and 2000 HSC Codes will prohibit the use of fire-fighting foams containing PFOS in marine fire-fighting. The Union position should be to support these amendments, as PFOS was a harmful substance both to human health and to the marine environment.
- (7) The amendments to SOLAS chapter XIV and the Polar Code will facilitate the mandatory application of certain provisions to fishing vessels and will make mandatory certain methodologies for determining a ship's operational capabilities in ice as an essential element of voyage planning. The Union position should be to support these amendments, as they will enhance the safety standards for non-SOLAS ships operating in Polar waters.
- (8) The amendments to the STCW Convention and Code will address the use of electronic certificates pursuant to the STCW Convention and Code. The Union position should be to support these amendments, as digitalisation of STCW certificates would facilitate the work and reduce the administrative burden for flag Administrations, port State control officers and seafarers. It could also allow for a faster identification of fraudulent certificates.
- (9) The amendments to the LSA Code will include new requirements for ventilation on survival craft other than totally enclosed lifeboats. The Union position should be to support these amendments as they enhance safety requirements with respect to ventilation standards in totally enclosed lifeboats.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 107th session of the International Maritime Organization's ('IMO') Maritime Safety Committee shall be to agree to the amendments – chapter II-2 of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and to the International Code of Safety for High-speed Craft, 1994 (1994 HSC Code) and 2000 HSC Code, to chapter XIV of the International Convention for the Safety of Life at Sea (SOLAS), 1974 and the International Code for Ships Operating in Polar Waters (Polar Code), the International Convention on Standards of Training, Certification and

¹ OJ L 169, 25.6.2019, p. 45.

² OJ L 330, 10.12.2013, p. 1.

³ OJ L 34, 9.2.1998, p. 1.

⁴ OJ L 354, 28.12.2013, p. 90

⁵ OJ L 257, 28.8.2014, p. 146

⁶ OJ L 208, 5.8.2002, p. 10

⁷ OJ L 169, 27.6.2022, p. 45

⁸ OJ L 163, 25.6.2009, p. 1

Watch-keeping for Seafarers, 1978 (STCW) and Code and the International Life-Saving Appliances (LSA) Code as set out in the IMO Circular Letter No.4658/Rev.1.

Article 2

The position referred to in Article 1 shall be expressed by the Commission and by the Member States of the Union that are members of the IMO's Maritime Safety Committee, acting jointly in the interest of the Union.

Article 3

This Decision is addressed to the Commission and the Member States.

Done at Brussels,

*For the Council
The President*