



Council of the  
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#### 'I/A' ITEM NOTE

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| From:          | General Secretariat of the Council                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| To:            | Permanent Representatives Committee/Council                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| No. Cion doc.: | ST 14825/23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Subject:       | Draft COUNCIL DECISION on the position to be taken on behalf of the European Union within the International Maritime Organization during the 33rd session of its Assembly on the adoption of amendments to the Guidelines on places of refuge for ships in need of assistance, to the Guidelines under the Harmonized System of Survey and Certification, to the Non-exhaustive list of obligations under instruments relevant to the IMO Instruments Implementation Code and to the Guidelines on implementation of the International Safety Management Code by Administrations |

#### INTRODUCTION

1. On 27 October 2023, the Commission transmitted the above proposal to the Council.
2. The proposal concerns the establishment of the Union position to be taken during the 33<sup>rd</sup> session of the Assembly (A 33) of the International Maritime Organization (IMO) with regard to the adoption of:
  - the Guidelines under the Harmonized System of Survey and Certification (HSSC), 2023 (to ensure the guidelines remain up to date);

- the revised Guidelines on places of refuge for ships in need of assistance (to provide a clear framework to deal with a ship seeking a place of refuge, in a consistent and harmonised manner, as proposed by the Member States and the Commission to IMO already in 2018);
- the 2023 Non-exhaustive list of obligations under instruments relevant to the IMO Instruments Implementation Code (to ensure that the list remains up to date); and
- the 2023 Guidelines on the implementation of the International Safety Management Code (‘ISM Code’) by Administrations (to develop the guidance on assessments and applications of remote audits).

3. Those instruments, which are expected to be adopted during A 33, would be capable of decisively influencing the content of Union law, namely Directive 2002/59/EC<sup>1</sup>, Regulation (EC) No 336/2006<sup>2</sup>, Regulation (EC) No 391/2009<sup>3</sup> and Directive 2009/21/EC<sup>4</sup> of the European Parliament and of the Council.

## WORK WITHIN THE COUNCIL PREPARATORY BODIES

4. The proposal was examined by the Shipping Working Party at its meetings on 7 and 10 November 2023. The Shipping Working Party agreed on some amendments to the Commission proposal.

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<sup>1</sup> Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

<sup>2</sup> Regulation (EC) No 336/2006 of the European Parliament and of the Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95 (OJ L 64, 4.3.2006, p. 1).

<sup>3</sup> Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (OJ L 131, 28.5.2009, p. 11).

<sup>4</sup> Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).

5. The Commission had proposed that Member States should support and agree to the adoption of a draft Assembly Resolution to promote actions to prevent illicit operations of “dark shipping” in the maritime sector, claiming that the draft resolution falls under Union exclusive competence because of its possible impact on the Union’s sanctions against the Russian Federation and would be capable of decisively influencing the application of Council Regulation (EU) No 833/2014<sup>5</sup> and Council Decision 2014/512/CFSP<sup>6</sup>.
6. Member States, while expressing general support for the substance of the draft resolution, questioned that it falls under Union exclusive competence. The Council Legal Service, invited to provide guidance, noted, inter alia, that the resolution, as a non-binding instrument, would not be capable of decisively influencing Union common rules and should therefore not be included in a Council Decision based on Article 218(9) TFEU.
7. The Shipping Working Party consequently agreed to delete the reference to this resolution in the draft Council Decision. It should be noted, however, that all Member States have since co-sponsored the draft resolution<sup>7</sup>.
8. The Commission voiced concerns on some of the amendments made to its proposal, in particular the deletion of the Assembly resolution, and announced its intention to make a statement to the minutes of the Permanent Representatives Committee and of the Council.
9. Following the agreement reached at working party level, the text of the draft Council Decision was revised by the Council's legal-linguistic services.

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<sup>5</sup> Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

<sup>6</sup> Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 13).

<sup>7</sup> See IMO document A 33/13/2 (“Amendments to the draft resolution on illegal operations in the maritime sector”), co-sponsored by all EU Member States as well as Canada, Ukraine, United Kingdom, United States, the Commission and the International Association of Independent Tanker Owners (INTERTANKO).

## CONCLUSION

10. The Permanent Representatives Committee is invited to examine and endorse the draft Council Decision, as contained in document ST 15419/23, prepared by the legal-linguistic services, and to transmit it to the Council for adoption.
  11. The European Parliament will be informed of the adoption in accordance with Article 218(10) TFEU.
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