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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	19 November 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	<b>COMMISSION STAFF WORKING DOCUMENT Union submission to International Maritime Organization's 8<sup>th</sup> session of the Sub-Committee on Ship Design and Construction commenting on SDC 8/5, the report of the Correspondence Group on Second Generation Intact Stability Criteria</b>

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Delegations will find attached document SWD(2021) 336 final.

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Brussels, 19.11.2021  
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**COMMISSION STAFF WORKING DOCUMENT**

**Union submission to International Maritime Organization's 8<sup>th</sup> session of the Sub-Committee on Ship Design and Construction commenting on SDC 8/5, the report of the Correspondence Group on Second Generation Intact Stability Criteria**

## **Union submission to International Maritime Organization's 8<sup>th</sup> session of the Sub-Committee on Ship Design and Construction commenting on SDC 8/5, the report of the Correspondence Group on Second Generation Intact Stability Criteria**

### **PURPOSE**

This Staff Working Document contains a draft Union commenting paper to the International Maritime Organization's (IMO) 8<sup>th</sup> session of the Sub-Committee on Ship Design and Construction (SDC 8). The IMO has indicatively scheduled SDC 8 from 17 to 21 January 2022.

The Sub-Committee on Ship Design and Construction has created a Correspondence Group to draft explanatory notes on the Second Generation Intact Stability Criteria. The Union submission comments on the report of the Correspondence Group. It suggests to develop simplified operational guidance using the vulnerability criteria to complement the explanatory notes.

### **EU COMPETENCE**

Directive 2009/45/EC<sup>1</sup> applies to vessels operating domestically carrying more than 12 passengers. Its Article 2(b) defines the Intact Stability Code as the Code on Intact Stability for all types of ships covered by IMO Instruments contained in IMO Assembly Resolution A.749(18), as amended.

Furthermore, in Directive 2017/2108<sup>2</sup>, Article 2(b) is amended to include a reference to the International Code on Intact Stability, 2008, contained in IMO Resolution MSC.267(85).

The criteria under discussion would lead to further development of the requirements of the International Code on Intact Stability, 2008, which constitute the point of reference under Directive 2009/45/EC, as recently amended by Directive 2017/2108.

Article 6(2)(a)(i) of Directive 2009/45/EC, applying to vessels operating domestically carrying more than 12 passengers, applies SOLAS, as amended, to Class A passenger ships. The Intact Stability Code 2008 was made mandatory in SOLAS under Resolution MSC.269(85).

In light of all of the above, the present draft Union submission falls under EU exclusive competence.<sup>3</sup> This Staff Working Document is presented to establish an EU position on the

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<sup>1</sup> OJ L 163, 25.6.2009, p. 1–140

<sup>2</sup> OJ L 315, 30.11.2017, p. 40–51

<sup>3</sup> An EU position under Article 218(9) TFEU is to be established in due time should the IMO Maritime Safety Committee eventually be called upon to adopt an act having legal effects as regards the subject matter of the said draft Union submission. 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 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*' (Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64). The present submission, however, does not produce legal effects and thus the procedure for Article 218(9) TFEU is not applied.

matter and to transmit the document to the IMO prior to the required deadline of 26 November 2021.<sup>4</sup>

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<sup>4</sup> The submission of proposals or information papers to the IMO, on issues falling under external exclusive EU competence, are acts of external representation. Such submissions are to be made by an EU actor who can represent the Union externally under the Treaty, which for non-CFSP (Common Foreign and Security Policy) issues is the Commission or the EU Delegation in accordance with Article 17(1) TEU and Article 221 TFEU. IMO internal rules make such an arrangement possible as regards existing agenda and work programme items. This way of proceeding is in line with the General Arrangements for EU statements in multilateral organisations endorsed by COREPER on 24 October 2011.

**DEVELOPMENT OF EXPLANATORY NOTES TO THE INTERIM GUIDELINES ON  
SECOND GENERATION INTACT STABILITY CRITERIA  
Comments on document SDC 8/5**

**Submitted by the European Commission on behalf of the European Union**

**SUMMARY**

*Executive summary:* This document comments on the report of the Correspondence Group (SDC 8/5), in particular on issues related to the preparation of simplified operational guidance.

*Strategic direction, if applicable:* 2

*Output:* 2.6

*Action to be taken:* Paragraph 9

*Related documents:* SDC 8/5, MSC.1/Circ.1627, MSC.1/Circ.1228

**Introduction**

1 This document is submitted in accordance with paragraph 6.12.5 of Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies (MSC-MEPC.1/Circ.5/Rev.1) and comments on document SDC 8/5.

2 The Sub-Committee, at its seventh session (3 to 7 February 2020) established an intersessional Correspondence Group. The Correspondence Group was tasked with further developing the draft Explanatory notes on the Second Generation Intact Stability Criteria, based on the respective annexes to documents SDC 7/INF.2 and addenda and SDC 7/INF.3, taking into account document SDC 7/5/1, with a view to finalization at SDC 8.

3 Operational Guidance can be used to show compliance with the Second Generation Intact Stability Criteria according to Section 1.1.3 in MSC.1/Circ.1627. Section 4.5.3 of the Circular identifies simplified operational guidance as one of the approaches for the preparation of operational guidance. According to Section 4.6.2 of the Circular, this guidance should be made for the acceptable sailing condition as function of ship forward speed and heading.

4 Neither Section 4.5.6.2 of the Circular nor the Explanatory Notes Section 1.7 of Appendix 5 describe the procedure on how simplified operational guidance should be prepared considering both ship heading and speed.

5 A proposal for guidance on preparing simplified operational guidance was included in an early draft version of the explanatory notes. However, in subsequent versions, these

sections were removed without any replacement proposals. A suggestion to restore the deleted sections or replace them made by Finland was not reflected in the correspondence group report.

### **Discussion**

6 Simplified operational guidance offers a practical and cost-effective way of generating ship specific operational guidance to the master for avoiding dangerous situations in these adverse conditions. This is seen as significant improvement to the current generic guidance provided by the MSC.1/Circ.1228.

7 Simplified operation guidance is seen as a valuable part of the Second Generation Intact Stability concept. The obtained information from this can be used when deciding whether the time-consuming direct stability assessment and detailed operational guidance are needed.

8 The European Union deems that procedures for creating simplified operational guidance using the vulnerability criteria should be developed to complement the explanatory notes.

### **Proposal**

9 The Sub-Committee is requested to invite IMO Member States and international organisations to develop and submit proposals on simplified operational guidance.