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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Maritime Organization's Marine Environment Protection Committee and Maritime Safety Committee on the adoption of amendments to regulation 14.1 of Annex VI to the International Convention for the Prevention of Pollution from Ships and to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the 73rd session of the International Maritime Organization's Marine Environment Protection Committee and at the 100th session of the International Maritime Organization's Maritime Safety Committee in connection with the envisaged adoption of amendments to regulation 14 of MARPOL Annex VI and to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011 (ESP Code).

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on the International Maritime Organization (IMO)

The Convention on the International Maritime Organization (IMO) establishes the IMO, the purpose of which is to provide a forum for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade, and 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; and 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.

All Member States are parties to the International Convention for the Prevention of Pollution from Ships ('MARPOL'), 1973, which entered into force on 2 October 1983. The Union is not a party to MARPOL.

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.

The International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011 (ESP Code), provides requirements for an enhanced programme of inspections during surveys of single-hull and double-hull bulk carriers and of single-hull and double-hull oil tankers, in accordance with the provisions of SOLAS regulation XI-1/2.

2.2. The International Maritime Organization

The International Maritime Organization (IMO) is the United Nations specialized 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 Organization is open to all States and all EU Member States are members of the IMO. The European Commission has held an observer status in the International Maritime Organisation (IMO) since 1974 on the basis of an Arrangement for Co-operation

and Collaboration between the Inter-Governmental Maritime Consultative Organisation (IMCO)¹ and the Commission of the European Communities on matters of mutual interest to the parties.

The IMO Marine Environment Protection Committee consists of all the IMO Members and meets at least once a year. It addresses environmental issues under the scope of the Organization concerned with 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, 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.

The IMO Marine Environment Protection Committee provides machinery for performing any duties assigned to it by the IMO Convention, the IMO Assembly or the IMO Council, or any duty within the above scope which may be assigned to it by or under any other international instrument and accepted by the IMO. Decisions of the Marine Environment Protection Committee, and of its subsidiary bodies shall be adopted by a majority of the Members.

The IMO Maritime Safety Committee also 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.

The IMO Maritime Safety Committee provides machinery for performing any duties assigned to it by the IMO Convention, the IMO Assembly or the IMO Council, or any duty within the above scope which may be assigned to it by or under any other international instrument and accepted by the IMO. Decisions of the Maritime Safety Committee, and of its subsidiary bodies shall be adopted by a majority of the Members.

2.3. The envisaged act of the IMO Marine Environment Protection Committee

On 22 – 26 October 2018, during its 73rd session (MEPC 73), the Marine Environment Protection Committee is to adopt amendments to regulation 14.1 of MARPOL Annex VI concerning the prohibition on the carriage of non-compliant fuel oil for combustion purposes for propulsion or operation on board a ship.

In 2008, the IMO adopted a resolution to amend MARPOL Annex VI containing regulations for the prevention of air pollution from ships. The revised Annex VI to MARPOL entered into force on 1 July 2010 and introduced, inter alia, stricter sulphur limits for marine fuel in SOx Emission Control Areas as well as in sea areas outside SOx Emission Control Areas.

Robust enforcement of the fuel oil standard set out in regulation 14.1.3 of MARPOL Annex VI, which becomes effective on 1 January 2020, will be an important element in order to facilitate a consistent implementation of the global sulphur limit of 0.50%. The purpose of the envisaged amendments to MARPOL Annex VI is to ensure the effective implementation of

¹ The name was changed in 1982 to International Maritime Organization (IMO).

regulation 14.1.3, with a view to significantly reducing shipping emissions of SO_x and particle matter to the atmosphere.

2.4. The envisaged act of the IMO Maritime Safety Committee

On 3 – 7 December 2018, during its 100th session (MSC 100), the Maritime Safety Committee is to adopt amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011 (ESP Code).

The purpose of the envisaged amendments to the ESP Code is to include editorial changes identifying all mandatory requirements and improving the tables and forms. The amendments will furthermore merge the editorial changes with new substantial requirements in order to deal with recent updates to the International Association of Classification Societies' (IACS) Unified Requirements (UR) Z10 series. The UR Z10 series deals with hull surveys of oil tankers, bulk carriers, chemical tankers, double hull oil tankers and of double skin bulk carriers. IACS Unified Requirements are resolutions adopted by IACS on matters directly connected to or covered by specific rule requirements and practices of classification societies and the general philosophy on which the rules and practices of classification societies are established. Subject to ratification by the governing body of each IACS Member Society, Unified Requirements shall be incorporated in the Rules and practices of the Member Societies, within one year of approval by the IACS General Policy Group. Unified Requirements are minimum requirements.

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

3.1. Amendments to regulation 14 of MARPOL Annex VI

During the 71st session of the Marine Environment Protection Committee (MEPC 71), which took place in London 3 – 7 July 2017, a new output on "Consistent implementation of regulation 14.1.3 of MARPOL Annex VI" was approved, for inclusion in the biennial agenda for 2018-2019 of the Sub-Committee on Pollution Prevention and Response and in the provisional agenda for the 5th session of the Sub-Committee on Pollution Prevention and Response (PPR 5), with a target completion year of 2019.

PPR 5, which took place in London 5 – 9 February 2018, developed draft amendments to regulation 14 of MARPOL Annex VI for a prohibition on the carriage of non-compliant fuel oil for combustion purposes for propulsion or operation on board a ship. With minor modifications, the 72nd session of the Marine Environment Protection Committee (MEPC 72), which took place in London 9 – 13 April 2018, approved the draft amendments to MARPOL Annex VI with a view to adoption at MEPC 73.

The amendments to regulation 14 of MARPOL Annex VI are set out in IMO Document MEPC 73/3. Paragraph 5.43 of the MEPC 72 report (MEPC 72/17) indicates that the amendments are foreseen to be adopted at MEPC 73.

3.2. Amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011 (ESP Code)

The 5th session of the Sub-Committee on Ship Design and Construction (SDC 5), which took place in London 22 – 26 January 2018, recalled that the 4th session of the Sub-Committee on Ship Design and Construction (SDC 4), which took place in London 13 – 17 February 2017, had authorized the International Association of Classification Societies (IACS) and the Secretariat to analyse the 2011 ESP Code, with a view to proposing editorial changes to identify all mandatory requirements; improve the format of the tables and forms; and provide a report on the progress made for consideration at SDC 5.

SDC 5 agreed that all substantive provisions currently contained in footnotes in the 2011 ESP Code should be included in the main body of the new consolidated text. SDC 5 furthermore agreed to improve the format of tables and forms in the ESP Code. SDC 5 finally also agreed to merge the editorial changes with new substantial amendments to the 2011 ESP Code, proposed by IACS that deal with the recent updates to the IACS Unified Requirements (UR) Z10 series.

SDC 5 endorsed the proposal to submit the draft amendments to the 2011 ESP Code to the 99th session of the Maritime Safety Committee (MSC 99), which took place in London 16 – 25 May 2018, for approval, with a view to subsequent adoption of the amendments at the 100th session of the Maritime Safety Committee (MSC 100) and entry into force on 1 July 2020.

MSC 99 considered the draft amendments to the 2011 ESP Code prepared by SDC 5 in accordance with the procedure for undertaking regular updates of the Code. MSC 99 approved the draft amendments to the 2011 ESP Code, which are set out in a draft MSC resolution, with a view to adoption at MSC 100.

The draft MSC resolution on amendments to the 2011 ESP Code is set out in Annex 2 of the MSC 99 report (MSC 99/22/Add.1). Paragraph 10.20 of the MSC 99 report (MSC 99/22) indicates that the amendments are foreseen to be adopted at MSC 100.

3.3. Relevant EU legislation and EU competence

3.3.1. Amendments to regulation 14.1 of MARPOL Annex VI

MARPOL Annex VI requirements, with regard to the reduction of sulphur content of marine fuel oils with a view decrease SO_x emissions, are implemented in EU law in Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels.

3.3.2. Amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011 (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.

Regulation (EU) No 530/2012 makes the application of the IMO's Condition Assessment Scheme (CAS) mandatory 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 100, which would introduce changes to the ESP Code, would affect EU law, through the application of Regulation (EU) No 530/2012.

3.3.3. EU competence

The amendments to regulation 14.1 of MARPOL Annex VI would affect EU law through the application of Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels.

The amendments to the 2011 ESP Code would affect EU law through the application of 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.

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.²

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'*.³

4.1.2. Application to the present case

The IMO Marine Environment Protection Committee and the Maritime Safety Committee are bodies set up by an agreement, namely the Convention on the International Maritime Organization.

The acts which the IMO Marine Environment Protection Committee and the Maritime Safety Committee are called upon to adopt constitute acts having legal effects. The envisaged acts are capable of decisively influencing the content of EU legislation, namely Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels and 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.

This is because Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels reflects the sulphur-related requirements of MARPOL Annex VI and because Regulation (EU) No 530/2012 makes the application of the IMO's Condition Assessment Scheme (CAS) a requirement and CAS uses the Enhanced Survey Programme (ESP) as the tool to achieve its aim.

Therefore, the amendments to regulation 14.1 of MARPOL Annex VI and to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk

² Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraph 64.

³ Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

Carriers and Oil Tankers, 2011 (ESP Code) would affect EU law through the application of Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels and 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 respectively.

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 adopted on behalf of the Union. 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 sea 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

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on the position to be taken on behalf of the European Union in the International Maritime Organization's Marine Environment Protection Committee and Maritime Safety Committee on the adoption of amendments to regulation 14.1 of Annex VI to the International Convention for the Prevention of Pollution from Ships and to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011

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)[*Please see point 10.8 of the Interinstitutional Style Guide*] entered into force on 17 March 1958. 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.
- (2) Pursuant to Article 38(a) of the Convention on the IMO, the Marine Environment Protection Committee performs such functions as are or may be conferred upon the IMO by or under international conventions for the prevention and control of marine pollution from ships, particularly with respect to the adoption and amendment of regulations or other provisions.
- (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 International Convention for the Prevention of Pollution from Ships ('MARPOL Convention') entered into force on 2 October 1983.
- (5) Pursuant to Article 16(2)(c) of the MARPOL Convention, amendments thereto may be adopted by the appropriate body, in this case the Marine Environment Protection Committee.
- (6) The Marine Environment Protection Committee, during its 73rd session on 22 to 26 October 2018 ('MEPC 73') is to adopt amendments to regulation 14 of Annex VI to the MARPOL Convention.
- (7) The Maritime Safety Committee, during its 100th session on 3 to 7 December 2018 ('MSC 100') is to adopt amendments to the International Code on the Enhanced

Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011 ('2011 ESP Code').

- (8) It is appropriate to establish the position to be taken on the Union's behalf during MEPC 73, as the amendments to regulation 14 of Annex VI to the MARPOL Convention will be capable of decisively influencing the content of Union law, namely Directive (EU) 2016/802 of the European Parliament and of the Council⁴.
- (9) It is appropriate to establish the position to be taken on the Union's behalf during MSC 100, as the amendments to the 2011 ESP Code will be capable of decisively influencing the content of Union law, namely Regulation (EU) No 530/2012 of the European Parliament and of the Council⁵.
- (10) The amendments to regulation 14 of Annex VI to the MARPOL Convention concerning the prohibition on the carriage of non-compliant fuel oil for combustion purposes for propulsion or operation on board a ship should ensure robust enforcement of the fuel oil standard set out in regulation 14.1.3 of Annex VI to the MARPOL Convention, which becomes effective on 1 January 2020.
- (11) The amendments to the 2011 ESP Code should include editorial changes to the Code, identifying all mandatory requirements and improving the tables and forms, as well as merge the editorial changes with new substantial requirements in order to deal with recent updates to the International Association of Classification Societies' Unified Requirements Z10 series.
- (12) The Union's position is to be expressed by the Member States of the Union that are members of the IMO's Marine Environment Protection Committee and Maritime Safety Committee, acting jointly, in the interest of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 73rd session of the IMO's Marine Environment Protection Committee shall be to agree to the adoption of the amendments to regulation 14.1 of Annex VI to the International Convention for the Prevention of Pollution from Ships laid down in IMO Document MEPC 73/3.

Article 2

The position to be taken on the Union's behalf in the 100th session of the IMO's Maritime Safety Committee shall be to agree to the adoption of the amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011 laid down in Annex 2 to IMO document MSC 99/22/Add.1.

Article 3

1. The position referred to in Article 1 shall be expressed by the Member States of the Union that are members of the IMO's Marine Environment Protection Committee, acting jointly.

⁴ Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (OJ L 132, 21.5.2016, p. 58).

⁵ 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).

2. The position referred to in Article 2 shall be expressed by the Member States of the Union that are members of the IMO's Maritime Safety Committee, acting jointly.
3. Minor changes to the positions referred to in Articles 1 and 2 shall be agreed upon without further decision of the Council.

Article 4

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*