EUROPEAN
COMMISSION

Brussels, 3.11.2021
COM(2021) 671 final

2021/0352 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Maritime Organization's 32nd Assembly on the adoption of amendments to the Guidelines under the Harmonized System of Survey and Certification

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 32nd Assembly of the International Maritime Organization (IMO), taking place virtually from 6 to 15 December 2021.

During the 32nd Assembly (A 32), it is envisaged to adopt draft Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), 2021 and revoke Assembly resolution A.1140(31), by which the IMO Assembly, in its 31st session, adopted the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), 2019.

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.

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 notably based 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.

The IMO's Assembly is the governing body of the organisation. It consists of all IMO Member States, meeting every second year and can adopt measures agreed in all of the IMO's five main Committees. Among these five committees are the Maritime Safety Committee (MSC) and Marine Environment Protection Committee (MEPC).

2.3. The envisaged act of the IMO's Assembly

On 6 to 15 December 2021, during its 32nd session, the Assembly is to adopt amendments to the Guidelines under the harmonized system of survey and certification.

The purpose of the envisaged amendments is to update the Guidelines to reflect requirements deriving from amendments to the relevant mandatory instruments entering into force up to and including 31 December 2021.

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

3.1. Adoption of the Survey Guidelines under the Harmonized System of Survey and Certification, 2021, and revocation of A.1140(31)

The Sub-Committee on Flag State Implementation, the predecessor of the Sub-Committee on Implementation of IMO Instruments (III), agreed to revise the HSSC Survey Guidelines on a continuous basis. The Survey Guidelines are therefore updated at every session of the IMO Assembly. The latest version of the Survey Guidelines is included in resolution A.1140(31) and was adopted at the 31st session of the Assembly in 2019.

In its 6th session, III established the Correspondence Group on the Review of the Survey Guidelines under the HSSC and the Non-exhaustive list of obligations under instruments relevant to the IMO Instruments Implementation Code (III Code), under the coordination of China. This had been done the same way at previous sessions of III.

The Correspondence Group was asked to continue to develop draft amendments to the Survey Guidelines. These derive from the amendments to the relevant mandatory instruments due to enter into force up to and including 31 December 2021, taking into account the outcome of MEPC and MSC sessions. The adoption of the updated HSSC Survey Guidelines and revocation of resolution A.1140(31), which contains the current Guidelines, will be approved at the 104th session of MSC and 77th session of MEPC. After approval at both Committees, the draft Resolution will be referred to A 32 for adoption.

The regular review ensures that the HSSC Survey Guidelines remain up to date. The update to be adopted clarifies *i.a.* that expired primary batteries, which complied with the requirements of paragraph 12.6 of the annex to resolution MSC.149(77), could be used for no other purpose than to examine and check the operation of two-way VHF radiotelephone apparatus. The Union should therefore support these amendments, as they will ensure that the Survey Guidelines take into account new developments.

3.2. Relevant EU legislation and EU competence

Regulation (EC) No 391/2009[1] lays down common rules and standards for ship inspection and survey organisations. The criterion contained in Annex I, part B, point 7(k) of the Regulation requires a recognised organisation to ensure that the statutory surveys and inspections are carried out in accordance with the survey guidelines under the harmonised system of survey and certification adopted by the IMO.

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].

[1] 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. 11–23.

[2] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

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's Assembly is a body set up by an agreement, the Convention on the International Maritime Organization.

The act which the Assembly is called upon to adopt constitutes an act having legal effects. The envisaged act is capable of decisively influencing the content of 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. This is because it requires a recognised organisation to ensure that the statutory surveys and inspections are carried out in accordance with the survey guidelines under the harmonised system of survey and certification adopted by the IMO.

The envisaged act does 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 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.

[3] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) TFEU, 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 15(j) of the Agreement, the Assembly may adopt regulations and guidelines to Members concerning maritime safety, the prevention and control of marine pollution from ships and other matters concerning the effect of shipping on the marine environment assigned to the Organization by or under international instruments, or amendments to such regulations and guidelines which have been referred to it.

(4) The IMO's Assembly, in its 32nd session from 6 to 15 December 2021, is to adopt the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), 2021, and revoke IMO Assembly resolution A.1140(31), which contains the HSSC Survey Guidelines, 2019.

(5) It is appropriate to establish the position to be taken on the Union's behalf during the 32nd session of the IMO's Assembly, as the amendments to the HSSC Survey Guidelines will be capable of decisively influencing the contents of Union law, namely 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.

(6) The adoption of the HSSC Survey Guidelines, 2021 and revocation of the HSSC Survey Guidelines 2019 are part of a regular review. The Union should therefore support those amendments because they will ensure that the HSSC Survey Guidelines remain up to date.

(7) The Union's position is to be expressed by the Member States of the Union that are members of the IMO's Assembly, acting jointly,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 32nd session of the International Maritime Organization's ('IMO') Assembly shall be to agree to the adoption of the Survey Guidelines under the Harmonized System of Survey and Certification, 2021 as laid down in document III 7/17/Add.1, section 8 and annex 6 and the consequent revocation of IMO Assembly resolution A.1140(31).

Article 2

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

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President