EUROPEAN
COMMISSION

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2024/0250 (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 109th session of the Maritime Safety Committee on the adoption of amendments to the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF 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 109th session of the International Maritime Organization's Maritime Safety Committee (MSC 109), scheduled to take place from 2 to 6 December 2024.

During the MSC 109, it is envisaged to adopt amendments to the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF 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. The International Code of Safety for Ships using Gases or other Low-flashpoint Fuels ('IGF Code') is mandatory under 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 only to States and all EU Member States are IMO members. Since regional economic integration organizations cannot be members to IMO, the EU is not a member to this organization. However, following the signature of 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 Commission participates as an observer in the work of the IMO and can therefore transmit submissions to that organisation in its own name.

IMO's Maritime Safety Committee (MSC) 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 Maritime Safety Committee provides 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 of their subsidiary bodies, are adopted by a majority of their Members.

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

On 2 to 6 December 2024, during its 109th session, the Maritime Safety Committee is to adopt amendments to the IGF Code.

The purpose of the envisaged amendments to the IGF Code is to enhance the safety of ships, including passenger ships, using natural gas and other low flash point fuels (as marine fuels). The adoption of these amendments will promote the use of renewable and low carbon fuels and in particular Gases and other low flash point fuels such as low and zero-carbon Methanol, Hydrogen and Ammonia. This is in line with the decarbonisation and depollution objectives of the EU Fit for 55 legislative package.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF IN THE 109TH SESSION OF THE MARITIME SAFETY COMMITTEE

3.1. Amendments to the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code)

The Sub-Committee on Carriage of Cargoes and Containers (CCC) at its 9th session agreed to establish a Working Group on Amendments to the IGF Code and instructed it, taking into account the comments made and decisions taken in plenary, to prepare a draft set of amendments to the IGF Code based on the documents submitted to that session.

Having considered the report of the above-mentioned Working Group, CCC 9 noted the Group's discussion on the draft amendments to the IGF Code and that the Group had finalized them. The amendments include a variety of issues, including pump suction wells, safety relief valve discharge, fuel preparation rooms, structural fire protection and hazardous zones.

CCC 9 agreed to the draft amendments to the IGF Code as set out in annex 3 of CCC 9/14, for submission to MSC 108 for approval and subsequent adoption.

The Union's position in CCC 9 was to support the draft amendments to the IGF Code as proposed in CCC 9/3/3 (Liberia et al.) and to support the establishment of a working group to finalise the amendments to the IGF Code and to consider documents CCC 9/3/5 (Republic of Korea, Liberia and INTERTANKO) and CCC 9/3/8 (CESA).

MSC 108 approved draft amendments to the IGF Code, with a view to adoption at MSC 109. These amendments are circulated through IMO Circular Letter No.4879 of 29 May 2024 in Annex 2.

The Union should support these amendments because they will enhance the safety of ships, including passenger ships, using natural gas as fuel. These amendments provide an equivalent level of protection of the piping system and tank inlet from the relief valve discharge lines during normal operation and emergency. In addition, the existence of small wells of LNG fuel tanks should be acknowledged within the IGF Code.

4. RELEVANT EU LEGISLATION AND EU COMPETENCE

4.1.1. Amendments to the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code)

Article 6(2)(a)(i) of Directive 2009/45/EC on safety rules and standards for passenger ships engaged on domestic voyages applies SOLAS, as amended, to Class A passenger ships. Since the IGF Code is a mandatory Code under SOLAS then it is also applicable for passenger ships under this Directive.

In addition, Annex I of Directive 2009/45/EC in its section 1 and 2 contains regulations that require to comply with the requirements of the IGF Code:

- Regulation II-1/G/1: applicable to New Class B, C and D [and existing Class B ships] - "Ships, irrespective of the date of construction, converted to using or which undertake to use gaseous or liquid fuel having a flashpoint lower than otherwise permitted under Regulation II-2/A/10, subparagraph.1.1, shall comply with the requirements of the IGF Code, as defined in SOLAS II-1/2.28."; and
- Regulation II-1/G/57: Requirements for ships using low-flashpoint fuels - "Ships using gaseous or liquid fuel having a flashpoint lower than otherwise permitted under Regulation II- 2/4.2.1.1 shall comply with the requirements of the IGF Code, as defined in SOLAS II-1/2.28.

Therefore, the amendments to the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code) are capable of decisively influencing the application of Directive 2009/45/EC.

4.1.2. EU competence

The subject matter of the envisaged acts concerns an area for which the Union has exclusive external competence by virtue of the last limb of Article 3(2) TFEU, as the envisaged acts are liable to 'affect common rules or alter their scope'.

5. LEGAL BASIS

5.1. Procedural legal basis

5.1.1. 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.[1]

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*'.[2]

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

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

5.1.2. Application to the present case

The IMO's Maritime Safety Committee is a body set up by an agreement in accordance with the Convention on the International Maritime Organization.

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

– Directive 2009/45/EC on safety rules and standards for passenger ships. This is because Article 6 of that Directive provides that the provisions of Chapters IV, V and VI of the 1974 SOLAS Convention, as amended, must apply to new and existing passenger ships of Classes A, B, C and D [Article 6(1)(b)] and that new Class A passenger ships must comply entirely with the requirements of the 1974 SOLAS Convention as amended [Article 6(2)(a)(i)]. Since the IGF Code is a mandatory Code under SOLAS, then it is also applicable to passenger ships under Directive 2009/45/EC by virtue of the dynamic references to SOLAS thereunder. Further, Annex I to Directive 2009/45/EC contains regulations that require to comply directly with the requirements of the IGF Code.

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.

5.2. Substantive legal basis

5.2.1. 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.

5.2.2. Application to the present case

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

5.3. Conclusion

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

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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), 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 IMO's Maritime Safety Committee, in its 109th session from 2 to 6 December 2024, is to adopt amendments to the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code). The amendments include a variety of issues, including pump suction wells, safety relief valve discharge, fuel preparation rooms, structural fire protection and hazardous zones.

(5) It is appropriate to establish the position to be taken on the Union's behalf during the 109th session of the IMO's Maritime Safety Committee, as the envisioned acts are capable of decisively influencing the contents of Union law, namely Directive 2009/45/EC on safety rules and standards for passenger ships[1].

(6) The Union should support the amendments to the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code) because they will enhance the safety of ships, including passenger ships, using natural gas as fuel. These amendments provide an equivalent level of protection of the piping system and tank inlet from the relief valve discharge lines during normal operation and emergency. In addition, the existence of small wells of LNG fuel tanks should be acknowledged

[1] OJ L 163, 25.6.2009, p. 1

within the IGF Code. The adoption of these amendments will promote the use of renewable and low carbon fuels and in particular Gases and other low flash point fuels such as low and zero-carbon Methanol, Hydrogen and Ammonia. This is in line with the decarbonisation and depollution objectives of the EU Fit for 55 legislative package.

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

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 109th session of the IMO's Maritime Safety Committee shall be to agree to the adoption of amendments to the International Code of Safety for Ships Using Gases or other Low-flashpoint Fuels (IGF Code), as set out in Annex 2 of IMO Circular Letter No.4879 of 29 May 2024.

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