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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 during the 105th session of the Maritime Safety Committee and the 46th session of the Facilitation Committee on the adoption of a resolution on performance standards for survival craft portable two-way VHF radiotelephone apparatus, revising resolution MSC.149(77) and amendments to the Convention on Facilitation of International Maritime Traffic (FAL)

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 105th session of the International Maritime Organization's Maritime Safety Committee (MSC 105), taking place from 20 to 29 April 2022, and at the 46th session of the International Maritime Organization's Facilitation Committee (FAL 46), which will take place from 9 to 13 May 2022.

During MSC 104, it was envisaged to adopt a MSC resolution at MSC 105 on performance standards for survival craft portable two-way very high frequency (VHF) radiotelephone apparatus, revising resolution MSC.149 (77).

During FAL 45, it was envisaged to adopt amendments at FAL 46 to the Convention on Facilitation of International Maritime Traffic (FAL).

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 Convention on Facilitation of International Maritime Traffic (FAL), adopted on 9 April 1965, which entered into force on 5 March 1967. The Union is not a party to FAL.

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 based notably 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 Maritime Safety Committee 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 Facilitation Committee consists of all the IMO Members and meets at least once a year. It deals with matters related to the facilitation of international maritime traffic, including the arrival, stay and departure of ships, persons and cargo from ports. The Committee also addresses electronic business, including the single window concept, and aims to ensure that the right balance is struck between regulation and the facilitation of international maritime trade.

Both IMO's Maritime Safety Committee and Facilitation Committee provide 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 the Facilitation 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 20 to 29 April 2022, MSC 105 is to adopt a draft MSC resolution on performance standards for survival craft portable two-way VHF radiotelephone apparatus, revising resolution MSC.149(77).

The purpose of the envisaged resolution is to improve the previously adopted, by resolution MSC.149.(77), performance standards for survival craft portable two-way VHF radiotelephone apparatus.

2.4. The envisaged act of the IMO's Facilitation Committee

On 9 to 13 May 2022, FAL 46 is to adopt amendments to the FAL Convention. The purpose of the envisaged amendments is to review and update the Annex of the FAL Convention, with a view to bring that Annex closer to the requirements of Regulation (EU) 2019/1239 and the agreed business rules for implementing the latter, namely by making electronic transmission through a single window mandatory, avoiding data elements being repeated, preventing paper forms from being used for the transmission of information, and waiving the requirement for a manual signature.

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

3.1. MSC resolution on Performance standards for survival craft portable two-way VHF radiotelephone apparatus, revising resolution MSC.149(77)

During the 8th session of the Sub-Committee on Navigation, Communications and Search and Rescue (NCSR 8), which took place virtually from 19 April to 23 April 2021, the Sub-Committee agreed to a draft MSC resolution on performance standards for survival craft portable two-way VHF radiotelephone apparatus, revising resolution MSC 149(77), with a view to approval by MSC 104 and subsequent adoption by MSC 105.

MSC 104 approved the envisaged amendments, with 12.8.2.9 of the MSC 104 report (MSC 104/18) indicating that the amendments are foreseen to be adopted at MSC 105.

At NSCR 8, the Union's position was to support the proposals in CIRM (NCSR 8/6/2) and Japan (NCSR 8/6/4) to amend resolution MSC.149(77) on performance standards for survival

craft portable two-way VHF radiotelephone apparatus to take into consideration the unified interpretation agreed at NCSR 7 and propose that document NCSR 8/6/4 (Japan) is used as the basis for amending the resolution.

The Union should support these amendments as they will improve the previously adopted, by resolution MSC 149(77), performance standards for survival craft portable two-way VHF radiotelephone apparatus, in order to cater for the modernization of the Global Maritime Distress and Safety System (GMDSS) and include the unified interpretation regarding the battery validity dates for survival craft portable two-way VHF radiotelephone apparatus.

3.2. Amendments to the Convention on Facilitation of International Maritime Traffic (FAL)

At its 42nd session, FAL approved a new output on "Review and update of the annex of the FAL Convention" with the aim to strengthen the provisions related to the electronic transmission of information, in order to include a clear obligation for the public authorities to introduce a single window, introduce the reporting once principle, mandate the use of the IMO Compendium on Facilitation and Electronic Business to ensure harmonization of the definitions of the data, clarify the functions of the FAL forms in the context of electronic transmission and waive the requirement for a manual signature. The new output was included in its 2018-2019 biennial agenda and in the provisional agenda for FAL 43, with a target completion year of 2021. In this regard, FAL 42 decided to establish a Correspondence Group on the Review and Update of the Annex to the FAL Convention under the coordination of France, and instructed this Member State to initiate a review of the Annex to the FAL Convention and draft amendments for further consideration by FAL 43.

FAL 43 endorsed the work of the Correspondence Group and decided, among others, that:

- The Recommended Practice on the establishment of a single window should be raised to a Standard;
- The definition of a single window should be a generic definition;
- The IMO Compendium should not form part of the Annex to the FAL Convention, but rather, there should only be a reference to it;
- A visa requirement (if necessary) for shore leave in the crew list should not be included;
- The establishment of national facilitation committees should remain as a Recommended Practice;
- Further discussions were required as to whether the data elements mentioned in the Annex to the FAL Convention should remain listed per formality or whether to include a holistic list in an Appendix.

The Committee also endorsed the re-establishment of the correspondence group on the review and update of the Annex to the FAL Convention, under the coordination of France.

FAL 44 approved the use of a consolidated master list of data in the appendix of the Annex to the FAL Convention and agreed to merge, in a single Standard, the existing Standards related to the authentication requirements for each of the declarations in the Annex of the FAL Convention. In addition, the Committee endorsed the re-establishment of the correspondence group on the review and update of the Annex to the FAL Convention, under the coordination of France, and agreed to extend the target completion year to 2023.

FAL 45 approved the envisaged amendments to the Annex of the FAL Convention, with paragraph 4.17 of the FAL report (FAL 45/22) indicating that the amendments are foreseen to be adopted at FAL 46.

At FAL 42, the Union's position was to support the proposal by Turkey (FAL 42/14) to establish a new output on the "Review and update the Annex to the FAL Convention". In addition, the decisions taken at FAL 43, FAL 44 and FAL 45 were in line with the Union positions.

Therefore, the Union should support these amendments, as they will bring the Annex to the FAL Convention closer to the requirements of Regulation (EU) 2019/1239 and adopt the agreed business rules for implementing the latter, namely to make the electronic transmission through a single window mandatory, avoid the repetition of data elements, prevent paper forms from being used for the transmission of information, and waive the requirement for manual signatures.

3.3. Relevant EU legislation and EU competence

3.3.1. MSC resolution on Performance standards for survival craft portable two-way VHF radiotelephone apparatus, revising resolution MSC.149(77)

Survival craft portable two-way VHF radiotelephone apparatus is covered by Directive 2014/90/EU on marine equipment as it is listed as item 5.17 of Commission Implementing Regulation (EU) 2021/1158 of 22 June 2021 on design, construction and performance requirements and testing standards for marine equipment and repealing Implementing Regulation (EU) 2020/1170[1]. Implementing Regulation (EU) 2021/1158 refers to the IMO Resolution MSC.149(77) on the adoption of the revised performance standards for survival craft portable two-way VHF radiotelephone apparatus.

Therefore, the performance standards for survival craft portable two-way VHF radiotelephone apparatus due to be adopted at MSC 105 will affect the requirements applicable under Directive 2014/90/EU.

3.3.2. Amendments to the Convention on Facilitation of International Maritime Traffic (FAL)

Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC[2] (the 'Reporting Formalities Directive') aims to simplify and harmonise the administrative procedures applied to maritime transport by making the electronic transmission of information standard and by rationalising reporting formalities. Article 7 of the Directive requires Union Member States to accept FAL forms for the fulfilment of reporting formalities. The Directive defines 'FAL Forms' in Article 2(c) as "*the standardised forms, as provided for in the FAL Convention*". In addition, the list of FAL Forms is provided in part B of the Annex to Directive 2010/65/EU.

In 2019, the EU adopted Regulation (EU) 2019/1239 of the European Parliament and of the Council of 20 June 2019 establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU[3] (the 'EMSWe Regulation'). This Regulation has entered into force, but will apply only as from 15 August 2025. Within this new framework, important

[1] OJ L 254, 16.7.2021, p. 1.
[2] OJ L 283, 29.10.2010, p. 1.
[3] OJ L 198, 25.7.2019, p. 64.

steps are made towards further reducing administrative burdens and increasing the efficiency and attractiveness of maritime transport. It provides for the creation of a European Maritime Single Window environment (EMSWe) with a common data set, harmonised reporting interfaces and the application of the reporting-only-once principle. The 'EMSWe data set' is defined in Article 2(8) of the Regulation as "*the complete list of data elements stemming from reporting obligations*". The reporting obligations are included in the Annex to the Regulation and include all the FAL forms in its Part B. Further, the third subparagraph of Article 3(3) of the Regulation sets out that "*When assessing whether data elements are to be included in the EMSWe data set, the Commission shall take into account safety concerns, as well as the principles of the FAL Convention, namely the principle of only requiring the reporting of essential information and keeping the number of items to a minimum*".

Therefore, the amendments to the Annex of the FAL Convention due to be adopted at FAL 46 will affect the application of the abovementioned rules of Directive 2010/65/EU and, as from the date when it becomes applicable, of Regulation (EU) 2019/1239.

3.3.3. EU competence

The MSC resolution on performance standards for survival craft portable two-way VHF radiotelephone apparatus, revising resolution MSC.149(77), would affect Union law, in particular the application of Directive 2014/90/EU.

The amendments to the Annex of the FAL Convention would affect Union law, in particular the application of Directive 2010/65/EU and, as from the date when it becomes applicable, of Regulation (EU) 2019/1239.

The Union, therefore, has exclusive competence by virtue of the last limb of Article 3(2) TFEU and it is, thus, necessary to establish the position of the Union on the acts adopting the above-mentioned amendments.

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.[4]

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*'.[5]

4.1.2. Application to the present case

The IMO's Maritime Safety Committee and Facilitation Committee are bodies set up by an agreement, the Convention on the International Maritime Organization.

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

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

The acts which these two IMO committees are called upon to adopt constitute acts having legal effects. The envisaged acts are capable of decisively influencing the content of the following EU legislation:

– Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC. This is because survival craft portable two-way VHF radiotelephone apparatus is covered by Directive 2014/90/EU on marine equipment, as it is listed as item 5.17 of Commission Implementing Regulation (EU) 2021/1158 on design, construction and performance requirements and testing standards for marine equipment and repealing Implementing Regulation (EU) 2020/1170.

– Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC and, as from the date when it becomes applicable, Regulation (EU) 2019/1239 of the European Parliament and of the Council of 20 June 2019 establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU (EMSWe Regulation). This is because Article 7 of the Directive requires Union Member States to accept FAL forms for the fulfilment of reporting formalities, whereas Article 3 of Regulation (EU) 2019/1239 sets out that "*When assessing whether data elements are to be included in the EMSWe data set, the Commission shall take into account safety concerns, as well as the principles of the FAL Convention, namely the principle of only requiring the reporting of essential information and keeping the number of items to a minimum*".

Therefore, the adoption of

– the MSC resolution on performance standards for survival craft portable two-way VHF radiotelephone apparatus, revising resolution MSC.149(77)

and the amendments to

– the Annex to the Convention on Facilitation of International Maritime Traffic (FAL)

would affect Union law, in particular Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC; Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC; and, as from the date when it becomes applicable, Regulation (EU) 2019/1239 of the European Parliament and of the Council of 20 June 2019 establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU (EMSWe Regulation).

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 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 maritime 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.

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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 during the 105th session of the Maritime Safety Committee and the 46th session of the Facilitation Committee on the adoption of a resolution on performance standards for survival craft portable two-way VHF radiotelephone apparatus, revising resolution MSC.149(77) and amendments to the Convention on Facilitation of International Maritime Traffic (FAL)

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) Pursuant to Article 48(a) of the Convention on the IMO, the Facilitation Committee may adopt amendments to the Convention on Facilitation of International Maritime Traffic ('FAL Convention')[1]. All Member States are parties to the FAL Convention. The Union is not a party to that Convention.

(5) The Maritime Safety Committee, during its 105th session from 20 to 29 April 2022, is to approve a resolution on performance standards for survival craft portable two-way very high frequency (VHF) radiotelephone apparatus, revising resolution MSC.149(77).

(6) The Facilitation Committee, during its 46th session from 9 to 13 May 2022, is to adopt amendments to the Annex to the FAL Convention.

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1 The FAL Convention entered into force on 5 March 1967.

(7) It is appropriate to establish the position to be taken on the Union's behalf during the 105th session of the Maritime Safety Committee, as the envisaged MSC resolution on performance standards for survival craft portable two-way VHF radiotelephone apparatus, revising resolution MSC.149(77), will be capable of decisively influencing the contents of Union law, namely Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC [2].

(8) The adoption of the MSC resolution on performance standards for survival craft portable two-way VHF radiotelephone apparatus, revising resolution MSC.149(77) would improve the previously adopted performance standards for survival craft portable two-way VHF radiotelephone apparatus. The Union should therefore support the resolution, as it is meant to cater for the modernization of the Global Maritime Distress and Safety System (GMDSS) and include the unified interpretation regarding the battery validity dates for survival craft portable two-way VHF radiotelephone apparatus.

(9) It is appropriate to establish the position to be taken on the Union's behalf during the 46th session of the Facilitation Committee, as the envisaged amendments to the Annex of the FAL Convention will be capable of decisively influencing the content of Union law, namely Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC[3] and, as from the date when it becomes applicable, Regulation (EU) 2019/1239 of the European Parliament and of the Council of 20 June 2019 establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU (EMSWe Regulation)[4].

(10) The amendments to the Annex of the FAL Convention would bring the Annex to the FAL Convention closer to the requirements of Regulation (EU) 2019/1239 and the agreed business rules for implementing the latter, namely by making electronic transmission through a single window mandatory, preventing data elements from being repeated, preventing paper forms from being used for the transmission of information, and waiving the requirement for manual signatures.

(11) The Union's position is to be expressed by the Member States of the Union that are members of the IMO's Marine Safety Committee and Facilitation Committee, acting jointly,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 105th session of the International Maritime Organization's ('IMO') Maritime Safety Committee shall be to agree to the adoption of the MSC resolution on performance standards for survival craft portable two-way VHF radiotelephone apparatus, revising resolution MSC.149(77).

[2] OJ L 257, 28.8.2014, p. 146.
[3] OJ L 283, 29.10.2010, p. 1.
[4] OJ L 198, 25.7.2019, p. 64.

Article 2

The position to be taken on the Union's behalf in the 46th session of the IMO's Facilitation Committee shall be to agree to the adoption of amendments to the Annex of the Convention on Facilitation of International Maritime Traffic ('FAL Convention').

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 Maritime Safety Committee, acting jointly.

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 Facilitation Committee, acting jointly.

Article 4

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President